

United States

3

Circuit Court of Appeals

For the Ninth Circuit.

MRS. AH FOOK CHANG, alias KAM YUEN and
ROBERT CHANG, alias YUK MOON,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Territory of Hawaii.

DEC - 4 1936

PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Arraignment, Continuance for Plea (Minutes of Court, January 20, 1936).....	24
Assignment of Errors.....	34
Attorneys of Record, Names and Addresses of..	1
Bill of Exceptions.....	45
Testimony for Mrs. Ah Fook Chang:	
Chang, Mrs. Ah Fook	
—direct	80
—cross	89
—redirect	95
Chang, Robert	
—direct	95
—cross	96
Witnesses for Defendant:	
Chang, Robert	
—direct	51
—cross	54
—redirect	60
Witnesses for Movant:	
Chang, Mrs. Ah Fook	
—direct	116

Index	Page
Witnesses for Plaintiff:	
Martin, William J.	
—direct	105
—recalled, direct	131
—cross	133
Pacheco, Antone	
—direct	107
—cross	108
—redirect	109
—recalled, direct	133
Pearson, Lee A.	
—direct	62
—cross	63
—recalled, direct	121
—cross	124
—redirect	125
Richardson, G. J.	
—direct	99
—cross	102
—recalled, direct	110
—recalled, direct	125
—cross	128
—redirect	130
Takemoto, R.	
—direct	66
—cross	67
—recalled, direct	117
—cross	120

Index	Page
Witnesses for Plaintiff (cont.):	
Wells, Wm. K.	
—direct	71
—cross	71
—recalled direct	110
—cross	113
—recalled, direct	136
Certificate of Clerk to Statement.....	4
Certificate of Clerk to Transcript.....	190
Citation (Original)	41
Clerk's Statement	2
Cost Bond	43
Exhibits:	
U. S. Exhibit "A".....	9
U. S. Exhibit "B".....	14
U. S. Exhibit "E".....	17
Hearing on Motion to Suppress Evidence, Pleas of Not Guilty (Minutes of Court January 30, 1936)	25
Hearing on Motion to Suppress Evidence as to Mrs. Ah Fook Chang. Motion Denied. (Minutes of Court February 17, 1936).....	26
Hearing on Motion for New Trial (Minutes of Court, February 24, 1936).....	32
Indictment	4
Indictment Filed (Minutes of Court, January 17, 1936)	24

	Index	Page
Minutes of Court:		
Friday, January 17, 1936.....		24
Monday, January 20, 1936.....		24
Thursday, January 30, 1936.....		25
Monday, February 10, 1936.....		26
Monday, February 17, 1936.....		26
Tuesday, February 18, 1936.....		28
Wednesday, February 19, 1936.....		30
Monday, February 24, 1936.....		32
Saturday, February 29, 1936.....		31
Motion to Suppress Evidence Denied (Minutes of Court, February 10, 1936).....		26
Motion for New Trial Denied. Sentence. (Minutes of Court, February 29, 1936).....		32
Order Allowing Appeal.....		40
Petition for Appeal.....		33
Proceedings at Trial, Continuance for Further Trial (Minutes of Court, February 18, 1936)		28
Proceedings at Further Trial. Verdict. (Minutes of Court, February 19, 1936).....		30
Praecipe for Transcript of Record.....		188
Sentence		8
Stipulation (U. S. Exhibit "F").....		23
Verdict		8

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For the Plaintiff, THE UNITED STATES OF
AMERICA,

INGRAM M. STAINBACK, Esq.,
United States Attorney,
Federal Building, Honolulu, Hawaii.

WILLSON C. MOORE, Esq.,
Assistant United States Attorney,
Federal Building, Honolulu, Hawaii.

For the Defendants, MRS. AH FOOK CHANG,
alias KAM YUEN and ROBERT CHANG, alias
YUK MOON,

E. J. BOTTS, Esq.,
Stangenwald Building,
Honolulu, Hawaii. [1*]

*Page numbering appearing at the foot of page of original certified
Transcript of Record.

In the United States District Court for the
Territory of Hawaii.

Cr. No. 8718.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

MRS. AH FOOK CHANG alias KAM YUEN and
ROBERT CHANG alias YUK MOON,
Defendants.

CLERK'S STATEMENT.

Time of Commencing Suit:

January 17, 1936—Indictment filed.

Names of Original Parties:

The United States of America, Plaintiff.

Mrs. Ah Fook Chang alias Kam Yuen and

Robert Chang alias Yuk Moon.

Dates of Filing Pleadings:

January 17, 1936—Indictment.

January 24, 1936—Motion to Suppress Evidence.

January 25, 1936—Answer to Motion to Suppress Evidence.

January 27, 1936—Traverse to Answer.

February 14, 1936—Motion to Suppress Evidence.

February 15, 1936—Answer to Motion to Suppress Evidence.

February 20, 1936—Motion for New Trial.

February 24, 1936—Affidavit in Diminution of Record.

Times When Proceedings Were Had:

January 17, 1936—Indictment filed.

January 20, 1936—Arraignment, continuance for plea.

January 30, 1936—Hearing on motion to suppress evidence. Pleas of not guilty. [2]

February 10, 1936—Motion to Suppress Evidence denied.

February 17, 1936—Hearing on motion to Suppress Evidence as to Mrs. Ah Fook Chang. Motion denied.

February 18, 1936—Proceedings at trial, continuance for further trial.

February 19, 1936—Proceedings at further trial. Verdict.

February 24, 1936—Hearing on motion for new trial.

February 29, 1936—Motion for new trial denied. Sentence.

Proceedings in the above-entitled matter were had before the Honorable S. C. HUBER, District Judge.

Dates of Filing Appeal Pleadings:

March 3, 1936—Petition for Appeal.

Assignment of Errors.

March 5, 1936—Cost Bond.

March 7, 1936—Order Allowing Appeal.

March 7, 1936—Citation Issued.

March 18, 1936—Praecipe for Transcript of Record.

CERTIFICATE OF CLERK AS TO THE
ABOVE STATEMENT.

United States of America,
Territory of Hawaii—ss.

I, WM. F. THOMPSON, JR., Clerk of the United States Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties, the several dates when the respective pleadings were filed; the dates when appeal documents were filed and issued in the above- [3] entitled cause and the name of the judge presiding.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 22nd day of September, A. D., 1936.

[Seal]

WM. F. THOMPSON, JR.,
Clerk, United States District
Court, Territory of Hawaii. [4]

[Title of Court and Cause.]

INDICTMENT.

Count I.

Violation of the Act of February 9, 1909, as amended by the Act approved January 17, 1914, as amended by the Act approved May 26, 1922, and known as THE NARCOTIC DRUGS IMPORT AND EXPORT ACT.

Count II.

Violation of Section I of the Act approved December 17, 1914, as amended.

A true bill.

(s) RILEY H. ALLEN

Foreman.

(s) INGRAM M. STAINBACK

United States Attorney,
District of Hawaii.

I hereby order a Bench Warrant to issue forthwith on the within indictment for the arrest of the defendant therein named, bail hereby being fixed at \$.....

.....
Judge, U. S. District Court,
Territory of Hawaii. [5]

Filed Jan. 17, 1936, at 11 o'clock and 23 minutes a. m. Wm. F. Thompson, Jr., Clerk, by (s) Thos. P. Cummins, Deputy Clerk.

[Title of Court.]

The United States of America,
District of Hawaii—ss:

COUNT I.

The Grand Jurors of the United States, empaneled, sworn, and charged at the term aforesaid, of the court aforesaid, on their oaths, present that:

MRS. AH FOOK CHANG alias KAM YUEN and ROBERT CHANG alias YUK MOON, on or about the 18th day of December, 1935, at Hilo, County of Hawaii, Territory of Hawaii, and within the said district and within the jurisdiction of this Court, did jointly, unlawfully, fraudulently, knowingly, and feloniously receive, conceal, buy, sell, and facilitate the transportation, concealment, and sale of, after having been imported and brought into the United States, a certain narcotic drug, said narcotic drug then and there being a derivative and preparation of opium, to wit: 70,008 grains of smoking opium and opium prepared for smoking, which said narcotic drug as they, the said MRS. AH FOOK CHANG alias KAM YUEN and ROBERT CHANG alias YUK MOON then and there well knew had been theretofore imported and brought into the United States contrary to law and to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

COUNT II.

And the Grand Jurors aforesaid, upon their oaths aforesaid, further present, that heretofore, to wit: On the 18th day of December, 1935, [6] at Hilo, County of Hawaii, Territory of Hawaii, and within the district aforesaid and within the jurisdiction of this court, Mrs. Ah Fook Chang alias Kam Yuen and Robert Chang alias Yuk Moon the identical persons named in the first count of this indictment, did jointly, knowingly, unlawfully, fraudulently,

and feloniously purchase, sell, dispense, and distribute 70,008 grains of smoking opium and opium prepared for smoking from packages to which there was not then and there affixed the tax-paid stamp required by law, which said opium and opium prepared for smoking then and there was a compound, manufacture, salt, derivative, and preparation of opium and was so purchased, sold, dispensed, and distributed by the said MRS. AH FOOK CHANG alias KAM YUEN and ROBERT CHANG alias YUK MOON, as aforesaid, not then and there being in the original stamped package and not being then and there taken from an original stamped package; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

(s) INGRAM M. STAINBACK

United States Attorney,
District of Hawaii. [7]

[Title of Court and Cause.]

VERDICT.

Filed Feb. 19, 1936, at 5 o'clock and 29 minutes p. m. (s) WM. F. THOMPSON, JR., Clerk. [8]

We, the Jury, duly empaneled and sworn in the above entitled cause, do hereby find as follows: MRS.

AH FOOK CHANG alias KAM YUEN

Of Count One Guilty with leniency

Of Count Two Guilty with leniency

and as to ROBERT CHANG alias YUK MOON
 Of Count One Guilty
 Of Count Two Guilty

of the Indictment heretofore filed herein.

Dated: Honolulu, T. H., this 19th day of February, 1936.

(s) S. M. HULL

Foreman. [9]

SENTENCE.

The COURT: It is the judgment and sentence of the Court that MRS. AH FOOK CHANG, on the first count of this indictment, on the Import and Export Act, shall be imprisoned in Oahu Prison for the period of TWO (2) years, and shall pay a fine in the sum of \$500.00, together with the costs of this Court. That, as to the defendant ROBERT CHANG, on the first count of this indictment, he be imprisoned in Oahu Prison for the period of TWO (2) years, and pay a fine of \$500.00, together with the costs of this Court. That, as to the second count of this indictment, MRS. AH FOOK CHANG shall be imprisoned in Oahu Prison for the period of one year and one day.

Mr. MOORE: May it please the Court, with reference to this count two, as to Mrs. Ah Fook Chang, I think possibly it would be a good deterrent if she were placed on probation on that particular count so the Court would more or less have her under control for the next five years. How does Your Honor react to that suggestion?

Mr. BOTTS: Why not place her on parole entirely, Your Honor; the jury recommended leniency.

The COURT: Yes, when the Court is giving her two years when it might give her 15, I think it's very lenient. In one other case not more than a year ago there was a sentence of 5 years and a fine of \$5,000.00, where the amount of opium involved was of little if any greater value than in this case.

[10]

In view of the recommendation of the United States Attorney as to count two, it is the judgment of the Court that Mrs. Ah Fook Chang be fined the sum of \$250.00; that as to any imprisonment, sentence will be suspended and defendant placed on probation for the term of Five (5) years, under Rule 131.

That, as to Robert Chang, as to count two, he shall be imprisoned for the period of one year and a day, without fine, the sentences to run concurrently as to Robert Chang. [11]

U. S. EXHIBIT "A"

admitted 2-18-36

Crim. #8718 U. S. Exhibit #7 marked for indent.

Statement of

ROBERT CHANG

alias Yuk Moon taken in the Hilo Police Station by Narcotic Agent William K. Wells at 8:30 P. M. December 19th 1935.

Q. What is your name?

A. Robert Chang alias Yuk Moon.

(Testimony of Robert Chang.)

Q. Where do you live?

A. Vineyard Street Wailuku Maui.

Q. When did you come to Hilo?

A. December 18, 1935.

Q. Did you sail from Maui or Honolulu?

A. Honolulu.

Q. How did you come to leave Honolulu for Hilo instead to Maui?

A. I left Maui on the 16th of December 1935 went to Honolulu and left for Hilo on the 17th of December 1935 arriving in Hilo on the morning of the 18th 1935.

Q. Why did you go to Honolulu?

A. My mother asked me if I wanted to go to Honolulu to bring some opium to Hilo, so I went and she gave me \$50.00 for my expenses I was to go to the Oahu Garment Co. on 78 N. King street and to look for a man by the name of Hong Yin Pin, and he was to give me this stuff. (In this blue note book found in your dress suit case the name of Hong Yin Pin is written in it is this the man you was to see yes, book shown to Robert Chang with the name of HONG YIN PIN" written in it and identified by him as being his property.)

Q. Did you meet this man?

A. I met a man I do not know who he was and I showed an envelope with Chinese and Haole written on it I asked him is that your name, he said yes and wanted me to give him the envelope and I tore it up. Then he said when you want the stuff, I said by 1:30 in the afternoon he told me

(Testimony of Robert Chang.)

to follow him but I did not want to so he told me to meet him at the corner of Kukui and Nuuanu Avenue and at Flower Shop which is on the corner, I waited there a long time in a taxi, then he came to my car and signal me to come I followed him and he took me to a house upstairs to his room and told me to wait there and he would telephone for the stuff. Then he left me and I was alone in the room and his pictures were on the wall. Then he came back and asked me for the money so I told him that I could not give him the money and then he said we go down stairs then we went in the back of the Flower shop and the two packages wrapped in Xmas paper were there then he said give me the money I took the envelope which I had in my pocket and opened it before I had it opened he told me to give it to him and I gave it to him. Then he told me to go.

Q. Did he tell you where to bring this stuff to Hilo?

A. I don't remember. [12]

Q. Then where did you go?

A. I went to my friend's house by the name of Henry Ching, my suit case was in the parlor and I put one package in the suit case and one I held in my arm, then I went to the boat.

Q. Did you see your mother on the boat at Mala that night?

A. Yes.

Q. Did you talk with your mother that night on the boat?

A. Yes.

(Testimony of Robert Chang.)

Q. Did you and your mother stay at the same hotel when you arrived in Hilo?

A. No.

Q. Did you come to Hilo Town alone or with your mother from the boat?

A. I came alone.

Q. Where did you go and stay in Hilo?

A. Mauna Kea Rooms.

Q. What time was Mrs. Chun Doon supposed to come and get the stuff?

A. I don't know sometime around 7:00 P. M.

Q. How much money did you deliver to Hong Yin Pin in Honolulu?

A. I do not know how much money was in the envelope?

Q. Who gave you this envelope containing the money?

A. Dang Wing Kong, at his house in the back of the Public Service Station, Wailuku, Maui.

Q. What was his instructions to you?

A. He told me to go to 78 North King Street Oahu Garment Company and see a man by the name of Hong Yin Pin and to be sure that I was to see Hong Yin Pin personally, then he gave me two envelopes one containing money and the other Hong Yin Pin's address, then I sailed for Honolulu.

Q. When you arrived in Honolulu what did you do?

A. I went to the Oahu Garment Company and went down stairs and asked a chinese man if he was Hong Yin Pin he said no he is up stairs so I went

(Testimony of Robert Chang.)

up stairs and found Hong Yin Pin and I gave him an envelope and gave him the code word given me by Dang Wing Kong I then went up stairs with Hong Yin Pin and he showed me his cloth material then he told me to come up later to the corner of Kukui Street and Nuuanu Avenue at a flower shop and wait for him there.

Q. Who paid your expenses for this trip?

A. Dang Wing Kong he gave me \$50.00.

Q. What else did Dang Wing Kong tell you?

A. He told me that if I got the money from Mrs. Chun Doon (\$3,000.00) to take it back to him.

Q. In the first part of this statement you stated that your mother gave you the \$50.00 for your expenses is that true or not?

A. No that is not true Dang Wing Kong gave me the money in Maui. [13]

(s) ROBERT CHANG

alias YUK MOON

Witness:

(s) WM. J. MARTIN

(s) JOHN B. DE MELLO

Subscribed and sworn to before me this 19th day of December A. D. 1935.

(s) WILLIAM K. WELLS

Dec. 20, 1935

Q. Did you give the Police Officers permission to search your room?

A. I was standing outside on the sidewalk, when three men came up to me and one of the men said he was a Police Officer, at the same time showing

(Testimony of Robert Chang.)

me a badge, and asked permission to search my room, I said O. K. and I took them up to my room (No. 10) at the Mauna Kea Rooms I unlocked the door, I entered the room, followed up the three Officers, I turned on the lights and opened the suit case, they found one box containing tins of opium in the suit case and one box containing tins of opium on the table.

(s) ROBERT CHANG

Witnesses

(s) E. W. ROSEHILL

(s) R. TAKEMOTO

(s) WM. K. WELLS [14]

U. S. EXHIBIT "B"

admitted 2-19-36

Crim. #8718 U. S. Exhibit #8. marked for indent.

Statement of

MRS. AH FOOK CHANG

taken in the Office of the Police Inspector George J. Richardson at Hilo Hawaii on Thursday Evening December 19, 1935 at 9:50 P. M. by Narcotic Agent Wm. K. Wells in the presence of Capt. Wm. J. Martin, Geo. J. Richardson, John B. de Mello.

Q. What is your name?

A. Mrs. Ah Fook Chang alias Kam Yuen.

Q. What is your husband's name?

A. Ah Fook Chang.

Q. Where do you live?

(Testimony of Mrs. Ah Fook Chang.)

A. Vineyard Street, Wailuku, Maui.

Q. When did you come to Hilo?

A. Yesterday morning December 18, 1935.

Q. When you arrived in Hilo where did you go to stay?

A. Okino Hotel Kamehameha Avenue.

Q. Have you a son by the name of Robert Chang?

A. Yes.

Q. Was Robert Chang, on the same boat with you when you came to Hilo?

A. Yes.

Q. Where did you get on the boat at Mala or Honolulu?

A. Honolulu.

Q. Did you know that Robert was going to be on that boat?

A. I was not sure, but I thought that he might be on the boat.

Q. Did you talk to your son Robert on the boat that night?

A. Yes, he came to my state room and we had a talk there.

Q. Do you know why your boy was on the boat that night?

A. One day last week in Maui a man by the name of Dang Wing Kong came to my house and asked me if my son Robert wanted to go to Honolulu and get a package and bring same to Hilo I said that it was up to the boy if he wanted to I

(Testimony of Mrs. Ah Fook Chang.)

went home and asked Robert if he wanted to go to Honolulu and he said sure. Then I told him to go and see Dang Wing Kong.

Q. Who paid for Robert's expenses for this trip?

A. I did not see the money but Robert told me that Dang Wing Kong had given him the money.

Q. Who was your son to see in Honolulu when he got there?

A. I don't know but my son showed me an envelope with the address of the Oahu Garment Company and another envelope with the name of Hong Yin Pin on it.

Q. Who were you and your son going to deliver this opium in Hilo?

A. To the wife of Chun Doon who has a store in Hilo by the railroad track. [15]

Q. Did Mrs. Chun Doon write to you people to bring this opium up?

A. No, she wrote to Dang Wing Kong of Wailuku Maui.

Q. What did Dang Wing Kong tell you to do when you get to Hilo?

A. He told me that the opium was worth \$3,000.00 and if she gave me the money to deliver the money to him personally.

Q. Is this all you know in regards to the 24 tins of opium brought to Hilo by your son Robert and yourself on December 18, 1935?

A. Yes this is all.

(Testimony of Mrs. Ah Fook Chang.)

Q. This statement that you make is the whole truth and nothing but the truth.

A. Yes.

(s) MRS. AH FOOK CHANG

Witness:

(s) G. J. RICHARDSON

(s) WM. J. MARTIN

(s) JOHN B. DE MELLO

Subscribed and sworn to before me this 19th day of December A. D. 1935.

(s) WILLIAM K. WELLS [16]

No. 4120.

U. S. EXHIBIT "E"
admitted 2-19-36

Crim. 8718 U. S. Exhibit #9 marked for indent.
Form T-C .Exb. 6.

PASSENGER'S IDENTIFICATION CHECK.

Issued at Kahului.

Reservations

NOT GOOD FOR TRANSPORTATION.

From KAHULUI

To Hon.

S. S. Wai

Sailing 12/16/35

Room 134 Berth B

Ticket of this number has been issued to: Mr. Robert Chang and covers passage, first class, from Kahului to Hon.

Full Half Qtr. Inft.

1

Inter-Island Steam Nav. Co., Ltd.

\$8.50 By F

Instructions to Passengers.

This ticket check is the identification portion of your passage contract with the company. It is sold subject to the rules and regulations of the company's tariff on file with the United States Shipping Board and printed on the reverse side of this ticket. The regulations should be carefully read and this ticket check kept for identification and evidence of your right to transportation to destination shown on ticket.

(Reverse side)

PASSAGE CONTRACT.

1. This contract ticket is sold subject to rules and regulations of the Company's Tariff on file with the United States Shipping Board and available for inspection at offices of the Company. The term "carrier" as used in the following provisions, indicates Inter-Island Steam Navigation Company, Ltd. and shall be deemed to include, when appropriate the Vessel, her owners, operators, charterers, agents, officers and crew.

2. This ticket is non-transferable and its presentation is a condition to the furnishing of transportation represented hereby.

3. Fare covering transportation to be furnished hereunder shall be deemed paid in consideration of the Company's engagement to carry: No refund

will be made except as provided in the Company's Tariff.

4. Carrier undertakes no responsibility for transportation or care of passengers or baggage except on its own vessels: It is not [17] responsible for transportation beyond its own line or by any vessel of another Carrier, substituted as herein provided; nor shall it be responsible for care or storage of baggage or effects after landing same on dock at port of transfer or destination, such landing to be deemed redelivery thereof to passenger.

5. Carrier reserves the right to deny transportation or to reberth in the interest of other passengers or of the Vessel.

6. Advertised sailing and arrival times are approximately only: They may be delayed if Carrier shall deem it convenient or prudent to do so.

7. If the Vessel be prevented from leaving at or about the scheduled or advertised time, Carrier shall have liberty to substitute any other vessel, whether owned or operated by it or not, and to reberth passengers thereon: But if Carrier shall elect not to furnish such substitute vessel its only obligation hereunder shall be to afford transportation by the next regularly scheduled sailing of one of its vessels on which suitable accommodations are available, or, at passenger's option, to make refund of the fare paid.

8. Carrier is authorized to deviate the voyage in the interest of passengers of the Vessel for its own reasonable convenience, or to save life or property; all without incurring any liability to pas-

sengers on account thereof, or affecting the force of this contract.

9. Break-up of voyage by misfortune shall be deemed to complete transportation contracted for.

10. Liability for baggage, personal effects and other property of passengers: Carrier shall not be liable for any delay, loss or damage resulting to baggage, valuables or other property delivered into its custody, or to stateroom baggage, hand baggage, personal effects, money, valuables or other property retained by passenger in stateroom or on person when the same shall be occasioned by act of God, or of the public enemy; theft; peril of the seas; fire; collision stranding or other accident of navigation; restraint of government; barratry; desertion or revolt of crew; accident to or from machinery, boilers or steam or power explosion; latent defects in hull, machinery or fittings; unseaworthiness whether existing at the commencement of the voyage or not, provided Carrier shall have exercised due diligence to make the vessel seaworthy; or any other cause, whether or not of like or similar character to the foregoing, not directly attributable to its negligence. Nor shall Carrier be liable for any loss, theft or damage resulting by its negligence or otherwise to any money, jewelry, securities or other valuables not deposited with the Purser for safekeeping, during any time while such money and or other valuables are not needed for the passenger's personal use on board.

11. The regular fare payable for transportation under this ticket is based partly on the amount,

nature and value of the passenger's baggage and effects: For any excess in weight or bulk over tariff allowances, the established excess baggage charge must be paid, and Carrier will not be responsible for property which is not proper baggage under its Tariff rules. Likewise, in consideration of the regular fare, it is stipulated by passenger that the aggregate value of all property carried under full fare first-class ticket, including all baggage, personal effects and valuables, of whatever nature retained in passenger's custody, does not exceed \$100.00 (half, quarter and infant fares in proportion to fare paid), and any liability of the Company or other persons or interests above mentioned for delay, loss, or theft thereof or damage thereto [18] shall not exceed such sum, unless passenger shall declare a greater value in writing to a ticket or freight agent of the Company before embarkation, paying excess value charge of one per cent (1%) on the amount by which the value so declared shall exceed the above value allowance. Passengers are in addition entitled to free safe deposit of money and small personal valuables up to \$50, in value and in excess of that amount upon payment of excess value charge computed as above.

12. In addition to the restrictions upon its liability provided by this contract, carrier shall have the benefit of all statutes of the United States granting limitation of vessel-owners' liability.

13. The Carrier must have prompt notice of claims, and any suit must be promptly brought: The Carrier shall not be liable upon any claim in connec-

tion with this transportation (other than claims on account of death) written notice of which shall not have been filed with the Inter-Island Steam Navigation Company, Ltd., or its Agent, within thirty (30) days after arrival of the Vessel at passenger's destination, or in case of non-arrival from any cause, within thirty (30) days from the date the Vessel was due to arrive as above; and that Carrier shall not be liable upon any such claim for death, unless so filed within four (4) months after date of death. Nor shall the Carrier be liable to any suit based upon any claim filed as aforesaid unless commenced and process served within ninety (90) days after the filing of such claim. Provided, that if the fact or occurrence upon which any claim is based shall have made it impossible for the passenger or person claiming for his death to file the same within the time limited, a reasonable extension of time shall be allowed for this purpose.

14. This ticket shall expire thirty days from and after the date of issuance shown thereon and thereafter will not be valid for passage either going or return, nor will any refund of fare be made.

15. No agent or servant of Carrier shall have authority to alter or waive any of the conditions of this contract ticket.

INTER-ISLAND STEAM
NAVIGATION CO., LTD. [19]

[Title of Court and Cause.]

STIPULATION. [20]

Comes now THE UNITED STATES OF AMERICA, Plaintiff herein, and MRS. AH FOOK CHANG alias KAM YUEN and ROBERT CHANG alias YUK MOON, Defendants herein, through their respective attorneys, and hereby stipulate that Plaintiff's exhibit No. "F"—a note book found in a suitcase belonging to the Defendant ROBERT CHANG alias YUK MOON and containing on a page thereof the name "HONG YIN PIN"—need not be forwarded as an exhibit on appeal in this case but that in place and stead thereof the record may show that a small note book was found in the suitcase of the Defendant ROBERT CHANG alias YUK MOON, in his room shortly after his arrest, and that upon a page of that note book there appeared the name "HONG YIN PIN."

Dated: Honolulu, T. H., this 28th day of August, 1936.

THE UNITED STATES OF AMERICA
Plaintiff.

By its attorney:
INGRAM M. STAINBACK
United States Attorney
District of Hawaii

By (s) WILLSON C. MOORE
Assistant.

MRS. AH FOOK CHANG alias KAM YUEN and
ROBERT CHANG alias YUK MOON,
Defendants,

By their attorney:
(s) EBERT J. BOTTS [21]

INDICTMENT FILED.

From the Minutes of the United States District Court for the Territory of Hawaii.

Friday, January 17, 1936.

[Title of Court and Cause.]

The grand jury presented an indictment charging the defendants above named with the violation of the Narcotic Acts. The Court ordered that said indictment be filed. [22]

ARRAIGNMENT, CONTINUANCE FOR PLEA.

From the Minutes of the United States District Court, for the Territory of Hawaii.

Monday, January 20, 1936.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants with Mr. E. J. Botts, their counsel. This case was called for arraignment. The defendants waived the reading of the indictment, consenting that the charge be entered in the words thereof. The court ordered that this case be continued to January 27, 1936 at 2 p. m. for plea. [23]

HEARING ON MOTION TO SUPPRESS
EVIDENCE. PLEAS OF NOT GUILTY.

From the Minutes of the United States District Court for the Territory of Hawaii.

Thursday, January 30, 1936.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants with Mr. E. J. Botts, their counsel. This case was called for hearing on a motion to suppress. Robert Chang was called and sworn and testified on his own behalf. U. S. Exhibit "A", signed statement of Robert Chang, Dec. 20, 1935, was admitted in evidence, marked and ordered filed. Later the original was withdrawn and a copy substituted. The defense rested. Lee A. Pearson, investigator, Alcohol Tax Unit, was called and sworn and testified on behalf of the United States. R. Takemoto, Police Officer, Hilo Police Department, was called and sworn and testified on behalf of the United States. W. K. Wells, narcotic agent, was called and sworn and testified on behalf of the United States. Both sides rested. The Court took this matter under advisement, respective counsel to file briefs. The defendants entered pleas of not guilty without prejudice. The Court ordered that this case be continued to February 17, 1936 at 9 a. m. for trial. [24]

MOTION TO SUPPRESS EVIDENCE DENIED.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, February 10, 1936.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants by Mr. E. J. Botts, their counsel. This case was called for hearing on a motion to suppress the evidence. The motion was denied. An exception was noted and allowed. The Court instructed the clerk to call the jury for the purpose of trial of this case for February 17, 1936 at 9 a. m. [25]

HEARING ON MOTION TO SUPPRESS
EVIDENCE AS TO MRS. AH FOOK
CHANG. MOTION DENIED.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, February 17, 1936.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants with Mr. E. J. Botts, their counsel. This case was called for hearing on a motion to suppress as to the defendant Mrs. Ah Fook Chang. Mrs. Ah Fook Chang was called and sworn and testified on her own behalf. Robert

Chang was called and sworn and testified on behalf of the defense. The defense rested. G. J. Richardson, inspector of police, Hilo Police Department, was called and sworn and testified on behalf of the United States. William J. Martin, captain of police, Hilo Police Department, was called and sworn and testified on behalf of the United States. Antone B. Pacheco, police officer, Hilo Police Department, was called and sworn and testified on behalf of the United States. G. J. Richardson was recalled by the United States. Wm. K. Wells, narcotic agent, was called and sworn and testified on behalf of the United States. The United States rested. Mrs. Ah Fook Chang was called to testify further on her own behalf. Both sides rested. The Court ordered that this case be continued to 1:45 p. m. this day for argument. At 1:50 p. m. the case was resumed for argument. Argument was had by Mr. Botts. At 2:32 p. m. argument was had by Mr. Moore. At 3:00 p. m. further argument was had by Mr. Botts. At 3:10 p. m. the case was submitted. The motion to suppress evidence was denied by the Court. Mr. Botts noted an exception. [26]

PROCEEDINGS AT TRIAL, CONTINUANCE
FOR FURTHER TRIAL.

From the Minutes of the United States District Court for the Territory of Hawaii.

Tuesday, February 18, 1936.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants with Mr. E. J. Botts, their counsel. This case was called for trial. The following jurors were duly empaneled and sworn to try the issues herein: Herman F. Kuhlmann; Levi Polson; James M. Murray; Samuel M. Hull; Lawrence Gay; William L. Smith; William J. Hartung; Edwin S. Heise; Warren R. Starr; Tin Yau Alina; Charles R. Cartwright; and George R. Girdler. Mr. Moore read the indictment to the jury and made the opening statement for the prosecution. M. B. Bairos, Territorial Chemist and Analyst, was called and sworn and testified on behalf of the United States. U. S. Exhibit #1, 1 five tael tin of smoking opium, was marked for identification. U. S. Exhibit #2, 1 five tael tin of smoking opium, was marked for identification. R. Takemoto, police officer, South Hilo, County of Hawaii, was called and sworn and testified on behalf of the United States. U. S. Exhibit #3, cardboard box containing 11 five tael tins of smoking opium, was marked for identification. U. S. Exhibit #4, cardboard box containing 11 five tael tins of smoking opium, was marked for identification. U. S. Exhibit #5, 1 leather suit

case, was marked for identification. Lee A. Pearson, investigator, Alcohol Tax Unit, was called and sworn and testified on behalf of the United States. U. S. Exhibit #6, note book, was marked for identification. G. J. Richardson, inspector, Hilo Police Department, was called and sworn and testified on behalf of the United States. U. S. Exhibit #7, statement signed by the defendant Robert Chang, was marked for identification. U. S. Exhibit #8, [27] statement signed by Mrs. Ah Fook Chang, was marked for identification. Wm. J. Martin, Captain of Police, Hilo Police Department, was called and sworn and testified on behalf of the United States. Antone B. Pacheco, police officer, Hilo Police Department, was called and sworn and testified on behalf of the United States. It was stipulated as to the evidence of C. T. Stevenson if called to testify in this case. Wm. K. Wells, Federal Narcotic Agent, was called and sworn and testified on behalf of the United States. U. S. Exhibit #9, Inter-Island Steam Navigation Company passenger's identification check No. 4120, Kahului to Honolulu per S. S. Waialeale, sailing December 16, 1935, was marked for identification. U. S. Exhibit "A", heretofore marked for identification as U. S. Exhibit #7, was admitted in evidence, marked and ordered filed. The Court ordered that this case be continued to Wednesday, February 19, 1936 at 9 a. m. [28]

PROCEEDINGS AT FURTHER TRIAL.
VERDICT.

From the Minutes of the United States District Court for the Territory of Hawaii.

Wednesday, February 19, 1936.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants with Mr. E. J. Botts, their counsel. This case was called for further trial. It was stipulated that the jury heretofore empaneled and sworn to try the issues herein was present. Mr. Wells resumed the witness stand U. S. Exhibit "B", heretofore marked for identification as U. S. Exhibit #8, was admitted in evidence, marked and ordered filed. U. S. Exhibit "C", heretofore marked for identification as U. S. Exhibits #1 and #3, was admitted in evidence marked and ordered filed. U. S. Exhibit "D", heretofore marked for identification as U. S. Exhibits #2 and #4, was admitted in evidence, marked and ordered filed. U. S. Exhibit "E", heretofore marked for identification as U. S. Exhibit #9, was admitted in evidence, marked and ordered filed. U. S. Exhibit "F", heretofore marked for identification as U. S. Exhibit #6, was admitted in evidence, marked and ordered filed. U. S. Exhibit "G", heretofore marked for identification as U. S. Exhibit #5, was admitted in evidence, marked and ordered filed. All exhibits were admitted in evidence over the objection of Mr. Botts. The United States rested. Mr. Botts moved

to have the court reporter read to the jury the evidence given by these defendants before this court at the hearing on the motion to suppress the evidence in this case. The motion was denied and an exception allowed. The defense [29] then rested. At 10:25 a. m. argument was had to the jury by counsel for the prosecution. At 10:44 a. m. argument was had to the jury by counsel for the defense. At 11:30 a. m. the Court instructed the jury. At 11:59 a. m. bailiffs were sworn and the jury retired to deliberate upon a verdict. At 3:30 p. m. upon request of the jury and with the consent of respective counsel, certain exhibits in this case, to-wit signed confessions of each defendant, were sent to the petit jury room. At 5:29 p. m. the jury returned the following verdict: "We, the Jury, duly empaneled and sworn in the above entitled cause, do hereby find as follows: Mrs. Ah Fook Chang alias Kam Yuen of Count One Guilty with leniency, of Count Two guilty with leniency and as to Robert Chang alias Yuk Moon of Count One Guilty of Count Two Guilty of the Indictment heretofore filed herein. Dated: Honolulu, T. H., this 19th day of February, 1936. (s) S. M. Hull, Foreman. The Court ordered that said verdict be filed. Mr. Botts entered an exception to the verdict and gave notice of motion for new trial. The Court ordered that the matter of sentence herein be continued to Saturday, February 29, 1936 at 10 a. m.

[30]

HEARING ON MOTION FOR NEW TRIAL.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, February 24, 1936.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants by Mr. E. J. Botts, their counsel. This case was called for hearing on a motion for new trial. The case was submitted without argument by respective counsel on the motion for new trial. The Court ordered that this case be continued to February 29, 1936 for ruling. [31]

MOTION FOR NEW TRIAL DENIED.
SENTENCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Saturday, February 29, 1936.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants with Mr. E. J. Botts, their counsel. This case was called for ruling on a motion for new trial. The motion for new trial was denied. An exception was noted and allowed. The Court ordered that as to the first count the defendant Mrs. Ah Fook Chang be imprisoned in Oahu

Prison for two years and pay a fine of \$500.00 and, on the recommendation of the United States Attorney's Department, that as to the second count any sentence of imprisonment be suspended and the defendant placed on probation for five years under rule 131 of this court, that she pay a fine of \$250.00 together with the costs of court. The Court ordered that as to the first count the defendant Robert Chang be imprisoned in Oahu Prison for two years and that he pay a fine of \$500.00; that as to the second count he be imprisoned in Oahu Prison for one year and one day, said sentences to run concurrently, and that he pay the costs of court. *Mittimus* was stayed to March 7, 1936 at 10 a. m. [32]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Filed Mar. 3, 1936 at 3 o'clock and 05 minutes p. m. (s) WM. F. THOMPSON, JR., Clerk. [33]

To the Honorable, the Presiding Judge of the Above Entitled Court:

Come now MRS. AH FOOK CHANG, alias KAM YUEN, and ROBERT CHANG, alias YUK MOON, defendants above named, and conceiving themselves aggrieved by the Judgment, Order and Sentence made and entered herein in the above entitled proceedings, do hereby appeal from said Judgment, Order and Sentence to the Circuit Court of Appeals

for the Ninth Circuit, and file herewith their Assignment of Errors intended to be urged upon appeal and pray that their appeal may be allowed and that a transcript of all proceedings and papers upon which said Judgment, Order and Sentence was made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit of the United States.

MRS. AH FOOK CHANG

alias KAM YUEN and

ROBERT CHANG,

alias YUK MOON,

Defendants,

By (s) E. J. BOTTS

Their Attorney.

Receipt of a copy of the foregoing Petition for Appeal is hereby acknowledged, this 3rd day of Mar., 1936.

(s) WILLSON C. MOORE

Asst. U. S. District Attorney. [34]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Filed Mar. 3, 1936 at 3 o'clock and 05 minutes p. m. (s) WM. F. THOMPSON, JR., Clerk. [35]

Come now MRS. AH FOOK CHANG, alias KAM YUEN, and ROBERT CHANG, alias YUK MOON, defendants above named, and say that in the records and proceedings of the above entitled matter there is manifest error and that the final decision and judgment is erroneous and against the just rights of said defendants in this, to-wit:

I.

That the Court erred in overruling and denying the motion of Robert Chang, alias Yuk Moon, one of the defendants herein, to suppress the evidence obtained as a result of the search and seizure on December 18, 1935, when Hilo Police Officers accompanied by a Federal Officer entered his room in the Maunakea Rooming House and searched the same under the pretended authority of his consent to such search, no such consent, as a matter of law, having been given or received.

II.

That upon a hearing of the motion to suppress the evidence obtained as a result of the search and seizure referred to in the preceding assignment, the defendant offered to prove that the officers searching said room had reasonable grounds to obtain [36] and could reasonably have obtained a search warrant to authorize the said search and the Court erred in refusing said offer and denying defendant an opportunity to make said proof.

III.

That the defendant, Mrs. Ah Fook Chang alias Kam Yuen, petitioned the Court for the suppression, or exclusion, from evidence of a purported confession claimed to have been obtained from her by Federal Narcotic Officers and Police Officers of the City of Hilo on December 19, 1935, illegally and improperly and in violation of her Constitutional rights under the Fourth and Fifth Amendments to

the Constitution of the United States, and the hearing of said petition having been duly held, the Court erred in denying the same and holding and deciding that said confession was a free and voluntary act of the said Mrs. Ah Fook Chang alias Kam Yuen.

IV.

That in the course of the hearing on said motion to suppress said confession and while William K. Wells, Federal Narcotic Agent, was on the witness stand, he being the Federal Officer who had taken said confession, the said defendant, Mrs. Ah Fook Chang alias Kam Yuen, moved the Court to require the production of said confession for the purpose of inspection and for use in the further examination of the said witness and the Court erred in denying and refusing to require the Government to produce said confession at said time and for said purpose and in denying said defendant the right to examine the same.

V.

That on the trial of the above entitled cause, the Court erred in permitting, over the objection and exception of defendants, the introduction in evidence of the property and articles found and seized in connection with the search of the room premises of defendant, Robert Chang alias Yuk Moon, on the said 18th day of December, 1935. [37]

VI.

That the Court erred in admitting in evidence, over the objection and exception of the defendants,

the purported confession of Robert Chang admitted in evidence as U. S. Exhibit "A" on the ground that said purported confession was taken while said defendant was under illegal restraint and that the same was not a free and voluntary confession and was obtained as a result of an illegal search and seizure of his mind and memory while in unlawful confinement and by coercion.

VII.

That the Court erred in denying the request of Mrs. Ah Fook Chang alias Kam Yuen that the Court instruct the jury that the statement or confession of the said Robert Chang alias Yuk Moon (U. S. Exhibit "A") could only properly be considered as evidence against him and not as against her.

VIII.

That the Court erred in admitting in evidence, over the objection and exception of the defendants, the purported confession of Mrs. Ah Fook Chang alias Kam Yuen admitted in evidence as U. S. Exhibit "B" on the ground that said purported confession was taken while said defendant was under illegal restraint and that the same was not a free and voluntary confession and was obtained as a result of an illegal search and seizure of her mind and memory and while in unlawful confinement and by coercion.

IX.

That the Court erred in denying the request of Robert Chang alias Yuk Moon that the Court instruct the jury that the statement or confession

of the said Mrs. Ah Fook Chang alias Kam Yuen (U. S. Exhibit "B") could only properly be considered as evidence against her and not as against him. [38]

X.

That the plaintiff having rested, defendants offered in evidence the sworn testimony of the defendants given in connection with the motion presented by Mrs. Ah Fook Chang alias Kam Yuen to suppress the statement or confession purported to have been made by her and the Court erred in denying said offer and refusing to allow the evidence to be read to or considered by the jury.

XI.

That the Court erred in giving the Court's charge or instruction (No. 12-a) in that said instruction failed to define the meaning of the word "voluntary", as used in connection with the phrase "free and voluntary confession".

XII.

That the Court erred in refusing to give defendants' requested instruction number one.

XIII.

That the Court erred in refusing to give defendants' requested instruction number two.

XIV.

That the Court erred in refusing to give defendants' requested instruction number three.

XV.

That the Court erred in refusing to give defendants' requested instruction number five.

XVI.

That the Court erred in refusing to give defendants' requested instruction number six.

XVII.

That the Court erred in refusing to give defendants' requested instruction number seven. [39]

XVIII.

That the Court erred in refusing to give defendants' requested instruction number eight.

XIX.

That the Court erred in refusing to give defendants' requested instruction number nine.

XX.

That the Court erred in refusing to give defendants' requested instruction number ten.

XXI.

That the Court erred in denying defendants' motion for a new trial on the grounds set forth in said motion.

WHEREFORE, said defendants pray that the judgment and sentence of the Court herein may be reversed, annulled and held for naught and that the said defendants may be discharged and may

have such other and further relief as may be proper in the premises.

Dated: Honolulu, T. H., March 3, A. D. 1936.

MRS. AH FOOK CHANG alias
KAM YUEN, and
ROBERT CHANG, alias
YUK MOON,

Defendants.

By (s) E. J. BOTTS

Their Attorney.

Receipt of a copy of the foregoing assignment of errors is hereby acknowledged, this 3rd day of Mar., 1936.

(s) WILLSON C. MOORE
Ass't. U. S. District Attorney. [40]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

Filed Mar. 7, 1936 at 11 o'clock and 15 minutes a. m. Wm. F. Thompson, Jr., Clerk. By (s) Thos. P. Cummins, Deputy Clerk. [41]

Upon the application of MRS. AH FOOK CHANG alias KAM YUEN, and ROBERT CHANG alias YUK MOON, defendants above named, and upon the motion of their attorney, E. J. BOTTS, ESQUIRE,

IT IS HEREBY ORDERED that the petition for appeal, heretofore filed herein by defendants be and the same is hereby granted and the appeal to the United States Circuit Court of Appeals for

the Ninth Circuit from the judgment, order and sentence herein and heretofore filed, be and the same is hereby allowed and a transcript of the record of all proceedings and papers upon which said judgment, order and sentence was made, duly certified and authenticated, be transmitted, under the seal of the Clerk of this Court, to the United State Circuit Court of Appeals for the Ninth Circuit of the United States at San Francisco, State of California.

Dated at Honolulu, this 7th day of March, A. D. 1936.

(s) S. C. HUBER

Judge of the above-entitled Court.

Receipt of a copy of the foregoing Order allowing appeal is hereby acknowledged, this 6th day of March, 1936.

(s) WILLSON C. MOORE

Ass't. U. S. District Attorney. [42]

[Title of Court and Cause.]

CITATION ON APPEAL.

The United States of America

The President of the United States—ss.

To the United States of America, and I. M. Stainback, Esquire, Its Attorney: Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of

Appeals for the Ninth Circuit, to be held at the City and County of San Francisco, State of California, within thirty days from the date of this Writ, pursuant to an order allowing appeal, filed in the Clerk's office of the United States District Court in and for the District and Territory of Hawaii, wherein MRS. AH FOOK CHANG alias KAM YUEN and ROBERT CHANG, alias YUK MOON, are appellants and you are appellee, to show cause, if any there be, why judgment, order and sentence in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable CHARLES EVANS HUGHES, Chief Justice of the Supreme Court of the United States of America, this 7th day of March, A. D. 1936.

[Seal]

S. C. HUBER

Judge of the above-entitled Court.

Attest:

WM. F. THOMPSON, JR.,

Clerk, U. S. District Court.

Received copy this 6th day of March, 1936.

WILLSON C. MOORE

Ass't. U. S. District Attorney. [44]

[Title of Court and Cause.]

COST BOND.

Filed Mar. 5, 1936 at 3 o'clock and 25 minutes p. m. WM. F. THOMPSON, JR., Clerk. By (s) THOS. P. CUMMINS, Deputy Clerk. [45]

Know all men by these presents:

That we, MRS. AH FOOK CHANG alias KAM YUEN and ROBERT CHANG, alias YUK MOON, as principals, and FONG HING, as surety, are held and firmly bound unto the plaintiff in the above entitled matter in the sum of five hundred dollars (\$500.00) to be paid to the said plaintiff, for the payment of which, well and truly to be made to the said plaintiff, we bind ourselves and our respective heirs, executors and administrators firmly by these presents.

The condition of the above obligation is such, that

WHEREAS, the above-named defendants have taken an appeal from the District Court of the United States in and for the District and Territory of Hawaii to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the Judgment, Order and Sentence made, entered and filed in said cause on the 29th day of February, A. D. 1936,

NOW, THEREFORE, if the above-named defendants shall prosecute their said appeal to effect and shall answer all costs, if they fail to make good their appeal, then this obligation shall be void, otherwise to remain in full force and effect. [46]

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 5th day of March, A. D. 1936.

[Seal] (s) MRS. AH FOOK CHANG
alias KAM YUEN

[Seal] ROBERT CHANG alias
YUK MOON

Principals above named.

[Seal] FONG HING

Surety.

United States of America,
Territory of Hawaii—ss.

FONG HING, being first duly sworn, on oath, deposes and says: That he is the surety on the foregoing bond; that he is a resident of Honolulu, City and County of Honolulu, Territory of Hawaii, and has property situated within the Territory of Hawaii, subject to execution, and that he is worth in property within the Territory aforesaid more than double the amount of the penalty specified in said bond, over and above all of his debts and liabilities and property exempt from execution.

(s) FONG HING

Subscribed and sworn to before me, this 5th day of March, 1936.

[Seal] (s) THOS. P. CUMMINS
Deputy Clerk, U. S. District
Court, District of Hawaii.

The foregoing Bond is approved as to form, amount and sufficiency of surety.

Dated: Honolulu, T. H., this 5th day of March, A. D. 1936.

(s) S. C. HUBER

Judge, U. S. District Court, in
and for the District and Ter-
ritory of Hawaii.

The foregoing Bond is approved as to form.

(s) WILLSON C. MOORE

Ass't. U. S. District Attorney. [47]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

Filed Mar. 18, 1936 at 1 o'clock and 10 minutes
P. M. Wm. F. Thompson, Jr., Clerk. By (s) Thos.
P. Cummins, Deputy Clerk. [48]

BILL OF EXCEPTIONS.

BE IT REMEMBERED: That an indictment was returned against the defendants in the above entitled matter on the 17th day of January, 1936, and thereafter these defendants were duly arraigned in the United States District Court in and for the District and Territory of Hawaii. That prior to the entry of plea in said matter, the defendant, Robert Chang alias Yuk Moon, filed in said court a motion to suppress the evidence obtained against him in a search of his room premises on December

18, 1935, said motion to suppress being in words and figures following, to-wit:

(Title, Court and Cause omitted)

“Comes now ROBERT CHANG, alias YUK MOON, one of the defendants above named, and shows as follows:

I

“That on the 17th day of January, A. D. 1936, an indictment was returned against said defendant and Mrs. Ah Fook Chang, alias Kam Yuen, for an alleged violation of the Act of February 9, 1909, as amended by the Act approved January 17, 1914, as amended by the Act approved May 26, 1922, and known as the Narcotic Import and Export Act, and Section 1, of the Act approved December 17, 1914, as amended, and known as the Harrison Narcotic Act in that on [49] the 18th day of December, 1935, there was seized from defendant at Hilo, Island and County of Hawaii, certain smoking opium more particularly described in said indictment, which said smoking opium belonged to and was in his possession and control.

II.

“That said seizure was made by officers of the United States and Peace Officers of the County of Hawaii following the search of his private room and temporary dwelling in said Hilo and was made without authority or a search warrant or other legal justification for said search.

III.

“That said seizure was illegal for the reason that the same was obtained as a result of the search of defendant’s private room occupied by him in a certain boarding house on Maunakea Street in said Hilo, which said room constituted his private home and dwelling, said search having been made without a search warrant or other legal authority.

IV.

“Defendant expects that the said smoking opium so seized as aforesaid will be used against him on the trial of this cause.

“WHEREFORE, defendant moves that an order be entered herein suppressing said evidence and excluding it at the trial of this cause.

“Dated at Honolulu, this 24th day of January, A. D. 1936.

“(Sgd) ROBERT CHANG
alias Yuk Moon

Defendant about named.

“United States of America,
Territory of Hawaii—ss.

“ROBERT CHANG, alias YUK MOON, being first duly sworn, on oath, deposes and says: That he is one of the defendants above named; that he has read the above and foregoing Motion and knows the contents thereof and the things with reference to the search and seizure are correct to his knowledge and belief.

“(Sgd) ROBERT CHANG

“Subscribed and sworn to before me, this 24th day of Jan., 1936.

[Seal] (Sgd) GLADYS K. BENT
Notary Public, First Judicial Circuit, Territory of Hawaii.” [50]

That thereafter, to-wit, on the 25th day of January, 1936, plaintiff filed a traverse to said motion to suppress in words and figures following, to-wit:

(Title, Court and Cause omitted.)

“ANSWER TO MOTION TO SUPPRESS
EVIDENCE.

“To the Honorable S. C. Huber, Judge of the United States District Court for the Territory of Hawaii.

“Comes now THE UNITED STATES OF AMERICA, Plaintiff herein, by and through INGRAM M. STAINBACK, United States Attorney for the District of Hawaii, and in answer to the Motion to Suppress Evidence filed in the above entitled Court and Cause, respectfully shows unto this Honorable Court as follows:

I.

“Plaintiff admits the Defendants in the above entitled Court and cause were indicated as alleged in Paragraph I of said Motion to Suppress Evidence and that on December 18th, 1935, 24 five tael tins of smoking opium were

seized in Hilo, and are held to be used as evidence against these defendants.

II.

“As to Paragraph II of said Motion Plaintiff admits that the seizure was made by officers of the United States and Police Officers of the County of Hawaii and admits that said search was made without a warrant, but denies that said search was without authority or other legal justification by law.

III.

“That as to the allegations of Paragraph III Plaintiff denies the allegations of said paragraph insofar as they allege an illegal search but as to the other allegations thereof Plaintiff leaves Defendant to his proof.

IV.

“That as to the allegations in Paragraph IV the Defendant ROBERT CHANG alias YUK MOON is correct in that he expects this opium to be used against him in the trial upon the indictment returned in this cause. [51]

V.

“That Plaintiff herein alleges that the true facts relating to this search and seizure are as follows: That the Defendant, ROBERT CHANG alias YUK MOON, voluntarily consented to the search which resulted in the

seizure of the twenty-four tins of opium herein-above mentioned.

“WHEREFORE, Plaintiff prays that the Defendant’s Motion to Suppress Evidence be denied and dismissed and that this said Defendant take nothing by said Motion to Suppress Evidence.

“Dated: Honolulu, T. H., January 25th, 1936.

“THE UNITED STATES OF
AMERICA

Plaintiff.

“By INGRAM M. STAINBACK,
United States Attorney, District
of Hawaii,

“By (Sgd) WILLSON C. MOORE,
Assistant United States Attorney,
District of Hawaii.

“United States of America,
District of Hawaii—ss.

“W. K. WELLS, being first duly sworn, on oath, deposes and says:

“That he is an Agent of the Federal Narcotic Department; that he has read the above and foregoing Answer to Motion to Suppress Evidence and that the same to the best of his knowledge, information and belief is true; that the knowledge, information and belief as to such truthfulness is the voluntary statement of

ROBERT CHANG alias YUK MOON, one of the defendants herein.

“(Sgd) W. K. WELLS

Subscribed and sworn to before me this 25th day of January, 1936.

[Seal] (Sgd) THOS. P. CUMMINS,
Deputy Clerk, United States
District Court, Territory of
Hawaii.”

That thereafter, to-wit, on the 30th day of January, 1936, evidence was taken in support of and in opposition to said motion to suppress and the testimony in this connection is hereby summarized as follows: [52]

DIRECT EVIDENCE IN SUPPORT OF
MOTION.

ROBERT CHANG,

defendant, being first duly sworn, testified, on direct examination, that he was twenty-four years old; that he attended school three years, was born on Maui and now lives there. That he quit school in the fifth grade. That he came back from China in 1929 when he was eighteen years old. That he had gone to a Chinese school in China and that upon his return he entered the third grade. That he did not finish the fifth grade in school saying that he “didn’t pass that time”. He testified that he was in Hilo on December 18th last; that he came there by himself. That on December 18th, he went

(Testimony of Robert Chang.)

to the Maunakea Rooming House on Maunakea Street in Hilo. He went there in the morning about 7 o'clock and rented a room there and after renting the room went out leaving a suitcase in the room behind him. The room had a bed for him to sleep on and he intended to sleep there. When he left the room, he walked around Hilo. He first went down to the park. Asked if during the day officers of the law came to him, he said they did and he said it was about 7 o'clock and getting dark.

Q. And where did they first come to you?

A. I was crossing the street, sir.

Q. Crossing the street?

A. Yes sir.

Q. What street?

A. Right in front of the hotel, sir.

Q. Of Mauna Kea Street?

A. Yes sir.

Q. Were you walking toward the Mauna Kea Rooming House, or away from the Mauna Kea Rooming House?

A. Away.

Q. Away from it?

A. Yes sir.

Q. Did you have anything in your hands?

A. No sir.

Q. Where was this suitcase that you said you had?

A. In the room, sir.

Q. In the room?

A. Yes sir.

(Testimony of Robert Chang.)

Q. Did you have the key to that room?

A. Yes sir.

Q. Where was the key?

A. In my pocket, sir.

Q. How many officers approached you?

A. Three, sir.

Q. Three?

A. Yes sir.

Q. And what happened then?

A. First they called me to come back and they yelled out to me and asked me "Come here, boy", and they said they wanted to search my room.

Q. Did they tell you they were officers?

A. Yes sir, they said they were officers, and they shove me by the steps, they said they want to search my room, and I walk up; they tell me walk up first, and I went up to the room, and they told me, "What room you stay?" I said, "Ten"; they said, "Open the door"; and I scared, and I open the door; they ask me "Open the suitcase", and I open the suitcase. [54]

He said that he opened the door with the key that he had in his pocket when they told him he was under arrest. He said that when he opened the door, the next think they said to him was to open the suitcase.

Q. And did you open the suitcase?

A. Yes sir; I was scared, I open the suitcase and they say I am under arrest.

(Testimony of Robert Chang.)

The suitcase was found to contain a package of opium and there was also another package of opium on the table.

Q. Why was it that you let them in your room like that?

A. They shove me to the steps and they say they are police officers.

Q. And you felt you had to do that?

A. Yes sir.

On cross examination, the defendant repeated that they had shoved him up the steps. He didn't remember which one did this.

“They were on the street; it was dark outside”.

He was asked if it wasn't a fact that one of these police officers came up to him and said that he wanted to talk to him, showed his badge and told him he was a police officer and asked him if he might have permission to search his room and that he had replied that he could have such permission, and then voluntarily led them upstairs. The defendant answered this question in the negative. Again he was asked if he did not open the door voluntarily and replied:

“They told me open the door, sir.”

Q. In other words, you didn't open the door up there in front of room 10 until they told you to open it, is that right?

A. Yes sir, they told me to open it——

(Testimony of Robert Chang.)

Q. When they got you upstairs in front of this room 10 they told you "Open the door"?

And the defendant said that he opened the door because they told him to.

"I scared and then I opened it."

He was asked if he opened the suitcase because he was scared and he said he did. He was asked if inside the suitcase there was a shoe box wrapped up in Christmas paper and he said there was and then he was asked if this shoe box contained twelve five tael tins of opium.

A. I don't know how many.

Q. You knew there were tins of opium in there?

A. No sir.

Q. You didn't know there was opium there?

Mr. BOTTS: We don't dispute the facts. [54]

Mr. MOORE: You say you don't know that there was any opium in there?

A. They told me——

Q. Yes, but before they told you did you know there was any opium in there?

A. No sir.

Q. You didn't know a thing about it?

A. No sir.

Q. And this box on the table was just like the one in your suitcase, is that right?

A. Yes sir.

(Testimony of Robert Chang.)

Q. Wrapped up just the same?

A. Yes sir.

Q. Looked just the same?

A. Yes sir.

Q. And you didn't know what was in that?

A. No sir.

Q. So that when these officers asked you to let them look in your room you didn't know there was any opium in your room at all, is that right?

A. No sir.

Q. And you weren't afraid of anything, were you then?

A. I afraid——

Q. Afraid of what?

A. They were police officers.

Q. Well, what were you afraid of if you didn't have anything in your room that was wrong?

A. They might lick me.

Q. They might lick you?

A. Yes.

Q. It's your idea of a police officer that he's going to take you up in your room and lick you?

A. Yes.

Q. That's the only thing you were afraid of?

A. Yes sir.

(Testimony of Robert Chang.)

Q. You weren't afraid they might find something in your room that was wrong, were you?

A. Beg pardon.

Q. You weren't afraid that they might find something in your room that it was wrong for you to have, were you?

A. Beg pardon; I didn't get you.

Q. You weren't afraid before you went upstairs that they were going to find opium in your room, were you, because you didn't know there was any opium there, isn't that right?

A. Yes sir.

Q. And when you went upstairs the only fear that you had was that they might lick you, is that right?

A. Yes sir.

Q. And you weren't afraid they might find opium?

A. Beg pardon.

Q. Were you afraid before you went upstairs that they might find opium in your room?

A. I didn't get you.

Q. Well, you say you didn't know there was any opium there?

A. Yes.

Q. You had no idea there was any opium there, is that right?

A. Yes.

(Testimony of Robert Chang.)

Q. You didn't know what was in these boxes at all?

A. Yes sir.

And questioned further, he said the only fear he had was that the officers might lick him and reiterated that he didn't know that there was opium in the packages. He was then asked if two days after this opium was found in his room, he was not asked a lot of questions at the Police Station in Hilo. He was asked if he recognized the man sitting [55] in court in a light gray suit and he said he did. And he was then asked if this man had not asked him:

“Did you give the police officers permission to search your room?”

And he said he didn't remember. He was then asked:

Q. Didn't you answer, “I was standing outside on the sidewalk when three men came up to me and one of the men said he was a police officer”; do you remember telling him that?

He said he didn't remember. He was asked if he denied that he said that and he said no. [56]

Q. Do you deny that you said that?

A. No sir.

Q. You don't deny it?

A. What do you mean sir?

Q. Did you tell this man, Mr. Wells here that I just pointed out to you—

(Testimony of Robert Chang.)

A. What do you mean by "deny"?

Q. That means that you didn't say this.

A. Beg your pardon?

Q. Did you say this or didn't you?

A. I think I say that.

Q. And didn't you say this also: "at the same time showing me a badge asked permission to search my room; I said O. K." Did you say that?

A. I don't remember.

Q. Do you deny——

A. That time they want to lick me, that time in the——

Q. Who wanted to lick you? Anybody say they were going to lick you?

A. They was going to hit me in the office.

Q. Who?

A. A tall slim guy with eyeglasses.

Q. "and I took them up to my room, number 10 at Maunakea Rooms; I unlocked the door, I entered the room, followed by three officers"; did you say that?

A. I don't remember that long, sir.

Q. You don't remember whether you did or not?

A. No sir.

Q. And didn't you say "I turned on the lights and opened the suitcase; they found one box containing tins of opium in the suitcase

* * *"

A. Yes sir.

(Testimony of Robert Chang.)

Q. "and one box containing tins of opium on the table", did you say that?

A. Yes sir.

He was then shown a paper and asked if he had written the name Robert Chang on it and he said he did in Hilo December 20th.

"They told me sign my name."

Q. And Mr. Wells read this to you, and you read it, didn't you, before you signed it?

A. They told me to read it and they told me to sign it.

Q. And you read it and signed it?

A. They told me to sign it and I signed it.

This paper signed by the defendant was put in evidence as U. S. Exhibit "A" in connection with the motion.

On

Redirect Examination,

he said that the packages the officers found were those he put in his room at 7 o'clock in the morning. [57]

Q. And that was opium—well, you knew as a matter of fact that that was opium, didn't you; you knew this was opium didn't you?

A. Yes sir.

Q. So when these officers came up to you and asked to search your room, you knew that you had opium in there, isn't that correct?

A. Yes sir.

The Court questioned the witness as to his schooling and he said he came back from China in 1929 where he had been for seven years and three years

(Testimony of Robert Chang.)

of that time he was in a Chinese school. That before going to China, he had gone to public schools on Maui until he reached the third grade, following which he went to China. On his return he completed the third grade and fourth grade. He was asked:

Q. You completed the third grade and the fourth grade?

A. Yes sir.

Q. How many months did you go the year you were in the 5th grade?

A. I didn't pass, so I didn't go to school; that's why I quit.

Q. (Moore) That is, did you finish the 5th grade or go through the whole school year in the 5th grade and fail to pass the 6th grade, is that right?

A. No, I didn't pass the 6th grade.

Q. Yes, but you finished the school year, you went to school that whole year?

A. Until vacation.

Q. Until vacation time in the Summer, is that right?

A. Yes sir.

Q. But you failed to pass the 6th grade and then you quit school?

A. Yes sir.

Defendant having rested,

LEE A PEARSON

was called as the first witness for the plaintiff and was sworn and testified that he was stationed in Hilo, Hawaii, and was an investigator, Alcohol Tax Unit, Internal Revenue Service. He was in Hilo on December 18th and on that day assisted in the search of room 10 of the Maunakea Rooming House, being the room occupied by Robert Chang. He said that about 7 o'clock on December 18th, he, with police officers Pacheco and Takemoto, saw Robert Chang leaving the Maunakea Rooming House and he was just getting on Kilauea Avenue in front of the rooming house when police officer Takemoto stopped him and told him that "we wanted to see him". Chang came back to where the officers were on the sidewalk; that Takemoto showed him his badge, said he was a police officer and wanted permission to search his room. That defendant, said [58] "O. K., Come on up". That Chang led the way to the back of the building where the stairway went up, leading the way upstairs, walked right over to room 10, stopped, put his hand in his pocket, took out the key, opened the door, went in and turned on the light saying "Come in". The officers walked in and found a suitcase lying on the floor. The witness asked him what was in the suitcase and defendant said "Look see". The witness asked him "Open it up, if you will?" and defendant reached down and just lifted the cover; in there was a package wrapped in Christmas paper. The

(Testimony of Lee A. Pearson.)

witness took the package and opened it on the bed and found it contained twelve tins of opium. That Takemoto gave the witness a package similarly wrapped that had been on the table nearby and unwrapping this found it contained twelve tins of opium. That nobody threatened the defendant and there was no display of anything that could be called a threat.

On

Cross Examination

the witness was asked if Antone Pacheco was not with them and he said he was and the following proceedings occurred:

Q. As I understand, the facts are these; that about 5 o'clock in the evening of the day in question you and Pacheco and Takemoto of the Hilo Police began an investigation of this matter?

Mr. MOORE: I object, may it please the Court, to any investigation; we're talking about this search——

Mr. BOTTS: This investigation would show, Your Honor, what they did; that's what it's intended to bring out.

Mr. MOORE: We're showing what's just before and during the search, Your Honor; we're not on a fishing expedition.

Mr. BOTTS: There's no fishing expedition, by any manner, shape or means.

(Testimony of Lee A. Pearson.)

The COURT: We can't try the main case now.

Mr. BOTTS: I'm not attempting to; it's just the search and the immediate steps leading up to the search.

The COURT: Your witness has testified, and so has this witness, that at 7 o'clock they went to this place.

Mr. BOTTS: Yes. Now we're going to show that they began their details on this case at 5 o'clock, and followed the last witness Robert Chang and his mother to different places in Hilo, and it ultimately culminated in their apprehending Chang and gaining entrance to his room.

The COURT: But, assuming they had followed him from the time he left there at 7 o'clock in the morning, as he testified he did, how would that throw any light on the facts surrounding this immediate search? [59]

Mr. BOTTS: It's very material, if Your Honor pleases——

The COURT: The Court doesn't see it.

Mr. BOTTS: If these investigators were investigating, as I'm prepared to show they were in this case, there were certain things that properly should have been done. Now we offer to prove by this witness that he, with the officers I have named, Antone Pacheco and Takemoto, at 5 o'clock on the evening in ques-

(Testimony of Lee A. Pearson.)

tion were detailed to this case; that they saw Robert Chang's mother and Robert Chang himself coming out of the Hawaii Meat Market on Kamehameha Avenue and get on a bus and go down to Kress store on Kamehameha Avenue—that's about 1,000 feet from where they got on; these officers followed Mrs. Chang and her son in another machine; he will testify that as they approached the Kress store Mrs. Chang, with a baby in her arms, and Robert got off the machine and walked toward the Hilo Electric building, and these officers followed them. They shadowed their movements, in other words, from 5 o'clock to 7 o'clock, and then, at the moment they thought was auspicious, approached Robert Chang and demanded of him permission to search his room.

Mr. MOORE: We object, may it please the court; it's got nothing to do with the request for permission to search the room.

The COURT: Yes; the Court doesn't see the materiality of what happened prior to the time they contacted this defendant.

Mr. BOTTS: Will Your Honor consider that as an offer of proof?

The COURT: It may so be considered.

Mr. BOTTS: And will Your Honor rule on it?

The COURT: Yes. The offer is not admitted.

(Exception No. 1). To which ruling of the Court the defendant duly excepted and his exception was duly allowed.

The witness was then asked if he knew Norman Godbold in Hilo who is United States Commissioner there and he said he did. Asked if he did not from time to time apply to him for search warrants and he said he did and that Mr. Godbold was Commissioner on December 18th.

R. TAKEMOTO

was the second witness called by the plaintiff and being duly sworn testified that he is a police officer of the South Hilo Police Department and was such an officer on December 18th, 1935, and on that day he saw defendant, Robert Chang, around 7 o'clock in the evening. That he saw him in front of the Maunakea Rooming House about to cross the street. Asked what took place he said: [60]

A. I saw he was trying to cross the street, coming out from Mauna Kea Rooming House, and Mr. Pearson, Mr. Pacheco, and myself went there and told him, "Say boy", called him back, and I asked him—I told him that we were police officers, that we wanted "to look in your room, can you give us permission to go in your room"; he says, "O. K.", then he led us to his room, it was room number 10; then he pulled out the key from his pocket, opened the door, turned the light on, and told us, "Go ahead and look around".

(Testimony of R. Takemoto.)

He said nobody threatened defendant at any time and corroborated the witness Pearson's testimony with reference to the things found in the room.

Q. Did you threaten him, or did anybody else threaten him in any way?

A. No, nobody.

Q. At any time?

A. No.

Q. And not at any time during this search?

A. No.

On

On

Cross Examination

the following proceedings occurred:

Q. What was the first time, during the day that you saw either Robert Chang or his mother?

Mr. MOORE: I object to this, may it please the Court, as this is an attempt on behalf of counsel to get what the offer of proof just made that was denied. We're talking about 7 o'clock here.

Mr. BOTTS: We have a right to go into the antecedents of this search.

The COURT: You are, if it pertains to the search; but if it's a fishing expedition on your main case you're not.

Mr. BOTTS: We're not concerned with the main case; we're concerned here, Your Honor, with whether they had reasonable cause to apply for a search warrant. I expect to show

(Testimony of R. Takemoto.)

by this witness that they had this boy under surveillance for two hours, and I offer to show that.

Mr. MOORE: Then, may it please the Court, it is not proper for counsel to show or make out a case on cross-examination. I have no objection to him cross-examining this man to his heart's content about this search, but to go in and say he makes an offer of proof to show this, that and the other—let him put him on as his witness, and not on cross-examination.

Mr. BOTTS: We're not, Your Honor. They don't ordinarily stop a man on the street and say [61] "We want to search your room" unless there's some cause for it. Now, he says they apparently stopped this man in the lawful exercise of his right crossing the street at 7 o'clock in the evening. I submit to Your Honor that under the circumstances revealed by this direct examination we have an absolute right to inquire into the history of this situation, the matters that led up to the stopping of this man on the street; and I except to Your Honor's ruling. [63]

Mr. MOORE: May it please the Court, this man has brought a motion to suppress the evidence here, and he has set forth, so far as this witness is concerned, for which officer he closed his case, that this boy was intimidated or forced

(Testimony of R. Takemoto.)

against his will to open this door, and we're rebutting that by our answer here and putting on proof. To go around in circles here on something he says he's going to prove, that if he was going to prove anything like that the time for him to prove it is on his case in chief and call his witnesses for it. To come in here and attempt to drag in on cross-examination things that have nothing to do with this particular search, under a guise of cross-examination, we submit is absolutely improper, and we object to it.

The COURT: It seems to the Court that the issue in this motion is narrowed to very definite limits. The petition itself sets out that the search was unlawful in that this man's private room was invaded without a search warrant or lawful authority. In the answer the Government sets up that the search was made with the consent of the defendant—consent voluntarily given; and that is traversed by the traverse filed by the defendant, which alleges, as the Court now recalls it, that the search was not acquiesced in by him but virtually that he was coerced into permitting the search; in other words, that he was compelled by the officers to submit to this search. Any evidence bearing upon that question will be gladly received.

Mr. MOORE: To which we have no objections whatsoever.

(Testimony of R. Takemoto.)

Mr. BOTTS: We offer to prove, if Your Honor pleases, by this witness that, on or about 5 o'clock in the afternoon of the day in question, this witness and his associates, the officers, had information that reasonably led them to believe that this defendant Robert Chang had opium in his possession secreted in the room in the Mauna Kea boarding house; that they were acting upon this information which reasonably tended to establish that as a matter of law, and that they followed these defendants for two hours, from 5 o'clock in the afternoon until 7 o'clock, when they finally stopped Robert Chang. And what happened after that has been related in the evidence.

Mr. MOORE: We object to the offer as being incompetent, irrelevant and immaterial, and as having no bearing upon the issues of this case, on the matter now before the Court.

The COURT: In the view of the Court, an officer might keep a suspected person under surveillance on mere suspicion but he could not possibly apply for a search warrant on that suspicion. [63]

Mr. BOTTS: I wasn't dealing with suspicion, Your Honor; I was dealing with reasonable cause to believe, as a legal proposition, that these people had opium—that this man had opium; not mere suspicion, they had definite facts. Will Your Honor rule on the offer?

(Testimony of R. Takemoto.)

The COURT: Yes. The evidence will not be admitted.

(Exception No. 2). To which said ruling of the Court, the defendant duly excepted and his exception was duly allowed.

The third witness called for the plaintiff was

WM. K. WELLS,

Federal Narcotic Agent stationed in Honolulu, who testified that on December 20th, he was on the Island of Hawaii and on that day took a statement from Robert Chang with reference to the search of his room. He identified plaintiff's Exhibit "A" and Mr. Wells said that he had questioned the defendant with reference to this statement. That after it was typewritten, the witness read it to defendant and then asked defendant to read it; that defendant read it and handed back the copies to the witness who then asked him if it was correct and he said "Yes" and then asked:

"Do you mind signing it?"

And he said the defendant said "Yes" and he signed it.

On

Cross Examination

Mr. Wells said that he was not present at the time of the search and that he had talked to defendant in English without an interpreter.

The foregoing is a complete narrative of the testimony given in connection with the motion to

suppress the evidence obtained in searching the room of the defendant, Robert Chang, in the Maunakea Rooming House on December 18, 1935.

(Exception No. 3). That the matter being duly submitted to the court, the Court did thereafter overrule and deny said motion, to the overruling and denial of which defendant duly excepted and his exception was duly allowed. [64]

MOTION TO SUPPRESS CONFESSION.

That thereafter on, to-wit, the 14th day of February, 1936, and prior to the trial hereof, the defendant, Mrs. Ah Fook Chang, alias Kam Yuen, duly filed in the trial court a motion to suppress a confession purported to have been taken from her on or about December 19th, 1935, which said motion is in words and figures following, viz:

(Title, Court and Cause Omitted.)

“MOTION TO SUPPRESS EVIDENCE.

“Come now MRS. AH FOOK CHANG, alias KAM YUEN, one of the defendants above named, and shows as follows:

I.

“That on the 17th day of January, A. D. 1936, an indictment was returned against said defendant and Robert Chang, alias Yuk Moon, for an alleged violation of the Act of February 9, 1909, as amended by the Act approved January 17, 1914, as amended by the Act approved May 26, 1922, and known as the Narcotic Im-

port and Export Act, and Section 1 of the Act approved December 17, 1914, as amended, and known as the Harrison Narcotic Act, in that on the 18th day of December, 1935, there was seized from defendant, Robert Chang, alias Yuk Moon, at Hilo, Island and County of Hawaii, certain smoking opium more particularly described in said indictment, which said smoking opium belonged to and was in the possession and control of said Robert Chang, alias Yuk Moon.

II.

“That said seizure was made by officers of the United States and Peace Officers of the County of Hawaii and, following said seizure, movant was arrested and charged jointly with the said Robert Chang, alias Yuk Moon, with said narcotic offense.

III.

“That movant was taken in custody at approximately 7 o'clock P. M. of said 18th day of December, 1935, and, without warrant or process of any kind, she was held a prisoner by Federal officers and peace officers of Hilo until approximately 9 o'clock A. M. of December 20th, 1935, a period of thirty-eight hours, when she was brought before the United States Commissioner at said Hilo and charged. That [65] movant was taken to jail with her child, an infant in arms whom she is still nursing. That on or about 2 o'clock P. M. on the following

day, i. e. December 19th, 1935, notwithstanding that she had not been brought before the United States Commissioner or other magistrate to be charged, she, with her infant child, was conducted into a room or office and there subjected to a tortuous examination by Federal officers and peace officers of Hilo, in the course of which she was repeatedly informed that the inquisition would not cease, and she would not be permitted to rest with her baby, unless she signed a paper writing purporting to be a confession of her claimed complicity in connection with the opium seized from the said Robert Chang, alias Yuk Moon. That the interrogation continued throughout the entire afternoon and evening of said 19th day of December, 1935, when finally, at approximately midnight on said day, movant, completely exhausted by the ordeal and in great distress and apprehension over her plight and the condition of her child, affixed her signature to said paper writing to put an end to the torture of further accusatory proceedings by said officers. That during the afternoon and evening of said 19th day of December, 1935, movant had been wholly unable to take food of any kind because of her suffering and her mental condition of worry and fear, occasioned by the conduct of said Federal and peace officers aforesaid, and in consequence thereof, she was unable to nurse her child, her breasts being without the custo-

mary milk and the child, hungry and distressed and almost constantly crying in its plea for nourishment, caused movant frantically and without thought of self, to accede to the demands of said officers and to sign the paper writing desired by them. That movant is a person of the Chinese race with only a meager education and with only an imperfect understanding of the English language.

“That movant is informed and believes and alleges the fact to be that upon her trial in the above entitled matter the government intends to offer said paper writing in evidence and movant makes this motion in advance of the trial for the suppression of said paper writing on the ground that the same was obtained from her illegally and improperly and in violation of her constitutional rights under the Fourth and Fifth Amendments to the Constitution of the United States of America.

“WHEREFORE, movant moves that an order be entered herein suppressing said paper writing and excluding it from the evidence on the trial of the above entitled cause. [66]

“Dated at Honolulu, this 14th day of February, A. D. 1936.

(Sgd) MRS. AH FOOK CHANG
Alias Kam Yuen,
Defendant above named.

“United States of America,
Territory of Hawaii—ss.

“Comes now MRS. AH FOOK CHANG, alias KAM YUEN, and being first duly sworn, on oath, deposes and says: That she is one of the defendants above named and movant herein; that she has heard read and explained to her the foregoing Motion to Suppress Evidence and knows the contents thereof and that the same is true, except as to the matters and things alleged on information and belief, and as to these she believes it true.

(Sgd) MRS. AH FOOK CHANG

Subscribed and sworn to before me, this 14th day of Feb., 1936.

[Seal] (Sgd) GLADYS K. BENT

Notary Public, First Judicial Circuit, Territory of Hawaii.”

That thereafter, to-wit, the 15th day of February, 1936, the plaintiff filed in said cause a traverse to said motion to suppress, which is in words and figures following, viz:

(Title, Court and Cause Omitted.)

“ANSWER TO MOTION TO SUPPRESS
EVIDENCE

“To the Honorable S. C. Huber, Judge of The United States District Court for the Territory of Hawaii:

“Comes now THE UNITED STATES OF AMERICA, Plaintiff herein, by and through

Ingram M. Stainback, United States Attorney for the District of Hawaii, and in answer to the Motion to Suppress Evidence filed in the above entitled Court and cause on behalf of MRS. AH FOOK CHANG, alias KAM YUEN, one of the defendants above named, respectfully shows unto the Court as follows:

I.

“Plaintiff admits the allegations in Paragraph I of said Motion to Suppress Evidence except in so far as it alleges that the smoking opium belonged to ROBERT CHANG alias YUK MOON, and as to that allegation plaintiff leaves petitioner to her proof; [67]

II.

“Plaintiff admits allegations of Paragraph II of said Motion to Suppress Evidence;

III.

“Plaintiff denies each and every, all and singular, the allegations contained in Paragraph III of said Motion to Suppress Evidence and upon information and belief alleges that the true facts are as follows:

“That at about 7 P. M. on the 18th day of December, 1935, ROBERT CHANG, alias YUK MOON, one of the defendants herein, was found in possession of twenty-four tins of smoking opium at Hilo, County and Island of Hawaii, Territory of Hawaii, and was arrested by the peace officers of South Hilo and booked

at the police station in South Hilo for investigation; that shortly thereafter MRS. AH, FOOK CHANG alias KAM YUEN, the petitioner herein, was picked up and booked at the South Hilo police station for investigation by the peace officers of South Hilo; that during the time both of these defendants were booked for investigation, and on the 19th day of December, 1935, they were questioned with reference to the twenty-four tins of smoking opium seized from the possession of the above ROBERT CHANG alias YUK MOON; that at no time during said questioning were the defendants in any way intimidated, threatened, or did the peace officers of South Hilo or the federal officers who were present at the questioning state to this petitioner that they "would not cease questioning her, and she would not be permitted to rest with her baby, unless she signed a paper writing purporting to be a confession of her claimed complicity in connection with the opium seized from the said ROBERT CHANG alias YUK MOON"; that while questioning the said ROBERT CHANG alias YUK MOON the petitioner herein was present when he admitted how he happened to transport this opium to Hilo and from whom he had obtained it; that the petitioner, who is ROBERT CHANG alias YUK MOON's mother, stated at that time that what ROBERT CHANG alias YUK MOON had admitted was correct; that thereupon a written statement was taken from ROBERT CHANG alias YUK MOON and after reading and sign-

ing the same a written statement was taken from MRS. AH FOOK CHANG alias KAM YUEN, the petitioner herein, during the course of which she repeatedly requested the officers to help her boy, and in reply thereto she was informed that the Government could make no promise in that regard; that during the entire examination of the petitioner [68] herein she was not threatened in any way, shape, or form, and the thing that seemed to mainly interest her was an endeavor to get the officers to promise not to prosecute her son; that the statement made by MRS. AH FOOK CHANG alias KAM YUEN, which is intended to be used as evidence in this case, was free and voluntary, and with no promise of immunity or hope of reward.

“WHEREFORE, Plaintiff prays that the Defendant’s Motion to Suppress Evidence be denied and dismissed and that said Defendant take nothing by said Motion to Suppress Evidence.

“Dated: Honolulu, T. H., February 15, 1936.

“THE UNITED STATES OF
AMERICA,

Plaintiff.

“By INGRAM M. STAINBACK
United States Attorney, District of
Hawaii,

“By (Sgd) WILLSON C. MOORE
Ass’t. United States Attorney Dis-
trict of Hawaii.

“United States of America,
District of Hawaii—ss.

“WILLIAM K. WELLS, being first duly sworn, on oath deposes and says:

“That he is a Federal Narcotic Agent; that he was present at the questioning of the petitioner herein as set for in the above and foregoing Answer to Motion to Suppress Evidence and that the matters and things therein contained are true to the best of his knowledge, information and belief.

“(Sgd) WILLIAM K. WELLS

Subscribed and sworn to before me, this 15th day of February, 1936.

[Seal] (Sgd) THOS. P. CUMMINS

Deputy Clerk, United States District Court, Territory of Hawaii. [69]

That said motion to suppress the evidence being at issue, the matter came up for hearing on February 17, 1936, and the following proceedings were had:

MRS. AH FOOK CHANG

being called and sworn, testified on her own behalf as follows:

She testified she was forty-five years old; born on the Island of Kauai, Territory of Hawaii, and has lived in the Territory since birth with the exception of a short trip. That she went to school for a period of almost four years.

(Testimony of Mrs. Ah Fook Chang.)

Q. Have you learned to read and write English?

A. I learned very little, not much.

She testified the baby she had with her in court was fifteen months old and that she was nursing the baby with her breasts and that she lives in Wailuku, Maui, where she has five more small children under age, ranging from seventeen to six years old. That her husband's name is Chang Ah Fook, who lives in Wailuku. Said he doesn't do anything because he is old and has a rupture. That Robert Chang is her boy, her third-born child. That Robert is twenty-five years old. That she and Robert were in Hilo on December 18th, 1935. That they arrived on the Waialeale or Hualali, didn't know which. That they reached Hilo in the morning. That that night police officers locked her up about 7 o'clock in the evening. That they arrested her when she "in one store drinking soda water with my baby". Said that while she was in the store: "One Portuguese man came; I was sitting down; he come tell, 'Come here'; I just look at him; I was so frightened I didn't know what's the matter; and he just grab; then I stood up, hold my baby; he just grab my hand and pull me across the street; I didn't know why he take me." That there was another officer across the street waiting, whom she described as a "half [70] white." That they took her to her son Robert Chang's room in the Mauna-kea Rooming House. She had never been there before. This was the room she understood the boy

(Testimony of Mrs. Ah Fook Chang.)

rented that day. When she got there, the boy was sitting on the bed and she thought there were three police officers in there with him.

Q. What did they do after that?

A. When I went over there I see these two boxes open already; they was show me, he said, "You see this?" I said, "I don't know"; he said, "Do you know anything about this?" I said, "I don't know"; thats all what I know.

Q. Then what did they do?

A. Then they said "Well, come on, get in the car, and we'll lock you up tonight."

Asked what happened then, she said: "They take me to the calaboose house". First, however, they took her to her hotel to get her suitcase. Afterwards she was locked up in jail and the infant with her. Said they did not ask her any questions that night, nor did they take her before a judge or commissioner. That they didn't give her anything to eat in jail that night; she had had something to eat about six o'clock that evening. Stayed with her baby in jail all night and the next morning, she said: "They give me a little pork with a little rice, and some kind of fish, but I didn't eat much, though."

Q. Why not?

A. Because I worry about my baby, I couldn't sleep that night,—

(Testimony of Mrs. Ah Fook Chang.)

The next morning they didn't take her before a judge or commissioner and when lunch time came, she said:

A. They gave me the same thing; then I could not eat and I don't eat, and my baby get no more milk to drink.

Q. You were nursing him with your breasts?

A. Yes.

Q. What did your baby do?

A. She cry little bit, and I had some cookies that I bought for her to eat. [71]

She said that Thursday afternoon, about 2 o'clock, they took her down to the Police Station and they told her to sit down in a room, which she described as having a counter "and they had policemen telephone there."

She said she had not seen Robert Chang from the time she was arrested up to this time. That he wasn't with her and she couldn't talk to him and he couldn't talk to her.

Q. Did you ask them to do anything, in the way of letting you get word to your family?

A. Thursday night I ask, I want to telephone, they won't let me; that night I want to telephone to let my folks know, Thursday night, the same night, but they won't let me to telephone.

(Testimony of Mrs. Ah Fook Chang.)

She said she sat down in the place designated and waited.

Q. All right, what happened?

A. After Robert *pau* (finished)—that time after Robert questioned they took Robert for *kaukau* (meal) that time.

She said she sat in this place without being asked any questions.

Q. How long did you wait there?

A. I wait there 7 o'clock, and after 7 went in the room.

Q. You say you sat there from 2 to 7 and they didn't ask you any questions at all?

A. No; they ask Robert first.

Q. I'm asking you, did they ask you any questions?

A. No, they didn't ask me questions.

She was asked what happened at dinner and said that they offered to take her back to the "calaboose house" but she said she didn't want to eat and they asked her why and she told them "because I am worry my baby". That she had no dinner. That up to 6 o'clock they had not taken her before a judge or commissioner nor given her an opportunity to make bond, or charged her with any offense. At 7 o'clock they took her in a room next door in which there were four or five policemen and she was questioned.

Q. Who asked the questions, do you know?

A. I cannot tell, I don't know.

(Testimony of Mrs. Ah Fook Chang.)

Q. Well, don't say unless you know. Do you know?

A. I don't know which one ask me, I cannot remember which one ask me, because this one ask me, and this one ask me,—I don't know.

Q. They were all asking you questions? [72]

A. Yes; they didn't give me chance; I was so worried about my baby, I was so worried about my baby.

Q. Four or five of them kept asking questions?

A. Yes.

The questions concerned her knowledge of the opium which had been seized. She denied that she knew anything about it. She said they continued questioning her until about 8 o'clock and "by and by they bring my boy in the same room with me." Said they talked in a loud voice. She next fixed the hour that they brought the boy in as 9 o'clock and he remained in the room until the questioning was over.

Q. What did they say to you?

A. They ask me if I know this, and I said I don't know; they said, "You know, you have to tell, otherwise you stay in jail"; and I said, "I want to telephone"; they said, "No, no, you have to tell everything, then you can go outside, otherwise we won't let you telephone, we won't let you go to sleep."

(Testimony of Mrs. Ah Fook Chang.)

She said they said this to her "plenty times".

Q. They said they wouldn't let you go to sleep?

A. Yes, wouldn't let me go to sleep unless I have to tell everything, then I go to sleep.

Q. Did they say anything about your boy?

A. They said if I tell then easy for my boy and easy for me to go out; and I ask them if I can go up that night sleep with my baby some place; they said, "Sure, if you tell I let you go telephone"; I said, "I want to telephone to my husband, nobody knows where I am, you see."

Q. Did they say they would let you telephone to your husband?

A. They won't let me.

Q. I mean, did they say if you signed a paper—

A. Yes, if I sign paper.

Q. Did you, sometime that night, sign a paper?

A. They make me.

She said she signed the paper between half past eleven and midnight.

Q. Between half past 11 and midnight you signed a paper? [73]

A. Yes, because I worry I cannot get out with my baby; I didn't eat no food that evening and my baby get no more milk to drink,

(Testimony of Mrs. Ah Fook Chang.)

I worried about my baby; he said, "We let you go out if you sign the paper, it's easier for you."

She was asked if she read the paper over and she said she didn't know. "I forgot all bout it now." She said after she signed the paper, they took her back to jail again; did not take her before a judge or commissioner. That she and her baby spent the night in jail where she had spent the previous night. Next morning, about 9 o'clock, wasn't sure whether it was 9 or 10 o'clock, they took her to the Police Station and finally before a judge. That a bond was arranged for her and she was released. She was asked if Robert signed a paper relating to the opium and said:

A. I see my boy, we both in the same room; he make me to sign and make him to sign at the same time.

Q. Did you know what your boy signed?

A. He signed the paper, but I don't know what it says in the paper.

The paper she signed was typewritten and was one, two or three pages; she didn't know, explaining.

A. * * * I don't know; good many pages; I haven't got my mind to count those things; I was worried for myself to get place to rest because from Wednesday night to Thursday night I didn't rest good.

(Testimony of Mrs. Ah Fook Chang.)

Q. You signed this paper simply so you could get some rest?

A. Yes, I wanted to get some rest for my baby; my baby was on my arms all night; it was cold and raining over there.

Q. Except for those facts you wouldn't have signed the paper?

A. If I didn't sign the paper I wouldn't go to sleep.

Q. That's why you signed the paper?

A. Yes.

Q. If they had let you go to sleep you wouldn't have signed the paper?

A. I wouldn't have signed.

Q. You denied you had anything to do with the opium transaction?

A. I said, "I got nothing to do with this transaction." [74]

Q. Finally, on the second day, when your baby was cold and sick, you signed the paper?

A. Yes, for my baby's sake I do anything, because my baby never have enough breast that Wednesday night and Thursday.

She was asked if they told her that if she signed the paper they would fix her up so she could get out of jail and she said that they said "so you can go home sleep and get free".

Q. Can you use their own language that they used?

(Testimony of Mrs. Ah Fook Chang.)

A. I forgot all they tell me; they talk loud; one talk, and another come talk; and I cannot remember.

Q. How did it affect you, all these people asking questions in a loud voice?

A. One ask, and another ask; all puzzled up; I don't know.

On cross examination the witness said her father and mother were Japanese; that she was raised by a Chinese and Hawaiian mother, but her nationality is not Chinese. That her "Chinese father raised her up". That the baby with her is fifteen months old. That she took the baby to Hilo with her because she is nursing the baby and has to take it with her. That the baby is not weaned. She was drinking soda water when she was picked up December 18th. That a Portuguese man took hold of her arm and dragged her across the street, handling her rough. She identified Antone Pacheco, present in court, as the officer. Said they took her to Robert Chang's room where the opium packages were open. That she told the officers she didn't know what the packages were, then they took her to the Police Station, to the booking desk, then to the "calaboose house". They didn't question her that night or the next morning. That they brought her food in the morning describing it as "that small pan of kaukau", which was composed of rice, and some kind of fish. She said she just ate a little bit.

(Testimony of Mrs. Ah Fook Chang.)

That they gave her the same food for lunch. In the afternoon they took her to the Police [75] Station again but didn't question her in the afternoon. That they had her boy in another room. That in the evening her son went back to jail for his evening meal, but she didn't. "I don't want that kind kaukau". She was asked if the police didn't send out and get her just exactly what she wanted in the way of food and she said "no". That they brought her rice and "that kind of fish". That she was asked again if they didn't go out and get the food she wanted ordered and she said "I pay my own money for my biscuits for my baby". That they did not bring a regular dinner for her.

William Martin, Captain of the Hilo police was called in the courtroom and she recognized this policeman and said she had sent him to "buy cookies, not kaukau". After dinner she said they took her and her boy into a room. William K. Wells, Narcotic Agent, and George Richardson, Inspector of Police of Hilo, were brought into the courtroom for identification and she was asked if these two men did not question her on the night of December 19th. She indicated they had but that there were "some more yet". She was asked if it wasn't a fact that while they were in a room together, she kept telling her boy "tell them the truth", and she answered "They ask me for tell the truth. They tell me for tell the truth for I go

(Testimony of Mrs. Ah Fook Chang.)

out. I said 'I don't know anything.' They said 'You tell, I give you free and your boy go out.' "

Q. Didn't you tell the boy to tell the truth?

A. I don't know; I forgot.

She was then asked if she hadn't asked Mr. Wells that if she told the truth he would help her boy and she said "No, I don't know".

Q. Didn't Mr. Wells tell you that he couldn't promise you anything? [76]

A. I didn't ask him.

Q. You say, all the time your baby was crying?

A. Yes, she was crying.

Q. Crying and fussing? You understand what I mean by fussing—fretful?

A. Yes, she was fussing.

Q. And that's all afternoon and all this evening in the nighttime?

A. Yes.

Said she requested permission to telephone her husband and identified George Richardson as the one to whom the request was made.

Q. They didn't threaten you in any way; didn't offer to hit you, or anything like that?

A. They just tell me to tell—"hurry up, hurry up"; everyone ask me, I don't know what I'm going to do, each one ask me questions, I was so excited, I didn't know what to

(Testimony of Mrs. Ah Fook Chang.)

do; and they told me, they said "If you tell, I give you place to sleep tonight and you get out."

She was asked again if she had told her boy to tell the truth and she said she didn't know; she had forgotten.

Q. While they were questioning you there that night there was a man took this down on the typewriter, is that right, right inside the room?

A. Yes.

Q. And when they got pau writing this, first they read you this paper, didn't they, is that right?

A. I don't know.

Q. Well, didn't they read you this paper?

A. They read to me, but I didn't know what they read to me.

Q. And they read the paper to your boy before he signed it?

A. I don't know; I forgot.

Q. Then they gave you the paper to read before you signed it?

A. They tell me to sign it.

That she had forgotten whether they had given her the paper to read or not. That they had questioned her from 7 o'clock to half past eleven, almost twelve. Asked if it wasn't a fact that on the night

(Testimony of Mrs. Ah Fook Chang.)

of December 19th her boy was first questioned and signed his statement first: [77]

Q. But they were questioning your boy, weren't they?

A. They question my boy and question me, but I don't know what they ask me, and I don't know what I said.

She didn't remember whether the boy signed the paper first or not.

A. I don't remember who sign first; I know they told me sign for I can get free, that's all I know; I'm anxious to get rest and get out.

She answered she didn't know a thing they said to her or a question they asked.

Q. Did they tell you that you couldn't rest with your baby unless you signed?

A. They tell me when I sign then I can go out rest and sleep; if I won't sign——

Q. You asked them to rest?

A. I asked, I want to go home sleep.

Q. Whom did you tell that to?

A. I told some of the police if they got beds around there to rest,——

(interruption).

She was then asked if when she was taken to the boy's room she had been shown something and asked if she knew anything about it and she answered in

(Testimony of Mrs. Ah Fook Chang.)
the affirmative and that she told them she didn't know anything about it.

Q. Did you know what it was that they showed you?

A. Opium.

Q. You knew it was opium?

A. I didn't know the boy take opium.

Q. You knew that that was opium?

A. The policeman poked a needle into it; he showed me that, but I didn't know.

Referring to the motion to suppress, counsel reminded the witness that that paper said they had asked her questions all afternoon and she answered:

A. Outside they ask me; policemen one by one come ask me those things, but I said I don't know. [78]

She explained that it was in the evening that they took her in the room where the questioning took place. She reiterated that from 2 o'clock until dinner time they had asked her a few questions, the questions were asked by "some of these police".

Q. Did anybody tell you if you didn't do anything they would hurt you, anything like that?

A. Yes; they said if I didn't do what they tell me they lock me up and I got to stay in jail and my boy got to stay in jail 25 years; they told me that.

(Testimony of Mrs. Ah Fook Chang.)

Q. Did they offer to hit you or lick you, or anything like that?

A. Not to me, they never said to lick me.

Q. Did they do anything like that to your boy?

A. They did to my boy; the first afternoon only my boy they ask.

On redirect she said she had never been to Hilo before.

ROBERT CHANG,

next witness called in support of the motion, being sworn testified as follows:

That he is the son of Mrs. Ah Fook Chang, twenty-four years old, lives in Wailuku, Maui and that he quit school when he was in the fifth grade. That he spent seven years in China coming back here in 1929. He was asked with reference to being arrested in Hilo December 18th. Asked where they took him after he left his room in the Maunakea Rooming House, said they took him to jail and locked him up and he stayed there two nights until Friday morning. That he was released some time before twelve o'clock on that day. Said Thursday night they took him in a room where his mother was and asked him questions. That he thought the questioning was over about twelve o'clock that night.

Q. And you signed a paper?

A. They make me sign a paper; they told me sign a paper.

(Testimony of Robert Chang.)

That he thought he signed this paper about 10 or 11 o'clock. He was asked if he thought his mother signed a paper and he said he didn't remember. Asked if he saw them questioning his mother, [79] he answered in the affirmative and said there were four or five police officers there. Said they told his mother to tell the truth then they can let her go.

Q. What else did they say?

A. And he say, "If you tell everything we let you go out", and this and that, "otherwise you stay in here, we won't let you go out".

He identified Mrs. George Richardson as the one who made this statement. Said all the officers in the room asked questions. He said he finally saw his mother sign a paper, but didn't know at what hour it was.

On cross examination, he testified that both he and his mother signed a paper but not at the same time.

Q. They asked you some questions first, and then they took them down on the typewriter—do you know what a typewriter is?

A. Yes.

The witness said the statement was typewritten; they read it to him and gave it to him to read and he asked the meaning of a couple of words in the statement which were explained to him.

(Testimony of Robert Chang.)

Q. Then, after they got through explaining, and you got through reading it, you signed the paper, didn't you?

A. They told me to sign the paper.

Q. Who told you?

The witness identified Mr. George Richardson as the man who told him. He was asked if after he signed the statement the man on the typewriter didn't start writing again, his mother being asked questions, but the witness answered that the mother had "signed first".

Q. She signed first?

A. Yes; then afterwards they take that paper away and make it over again, and my mother sign then.

He was asked if his mother did not talk in Hawaiian to "this big Hawaiian policeman, Mr. Richardson" and he said he didn't remember. Said his mother speaks Hawaiian. [80]

Q. They didn't threaten to hurt you in any way, did they?

A. They want to lick me.

Q. Who wanted to lick you?

A. That first fellow that come in here, he want to lick me.

Q. Did he hit you?

A. No.

(Testimony of Robert Chang.)

He said four or five of the officers questioned him on the night of December 19th.

Q. When you signed this paper did he threaten to hit you or anything, when you signed it?

A. They tell me tell the truth and they tell me if I no sign the paper I no get free, if I sign the paper I get free, it would be better for me.

The cross examination being concluded the Court asked the witness if he knew "what that paper speak". The witness answered "After this policeman take it off, they poke right in front of me, I don't know what with; they open the case."

The COURT: Did they read the paper to you before you signed it?

Mr. BOTTS: He's talking about the paper you signed that night, Robert, not about the opium.

The COURT: They read the paper? You said they explained some words to you?

A. Yes.

The COURT: After they explained some words, you understood everything that was in that paper?

A. What you mean?

Mr. BOTTS: You understand the Judge's question? He wants to know if you savvy what the words said in that paper.

A. All the words?

Q. What they meant.

A. I think I know what it said; they tell me in the courthouse.

The COURT: Did you read it yourself?

A. Yes, I read it.

The evidence in support of the motion having been completed, the movant rested and the following proceedings were had:

G. J. RICHARDSON

was called on behalf of the plaintiff in opposition to said motion, and sworn testified as follows:

That he is Inspector of Police, County of Hawaii, and has held such job between fifteen and sixteen years and was with the [81] Hilo Police Department in December, 1935. That he knows the defendants. That he had these defendants booked at the Police Station December 18th. That they were booked for investigation to the Hilo Police Department where they remained booked until the evening of December 19th between 9 and 10 o'clock. That the witness was present on the evening of December 19th when the defendants were questioned; that they were not threatened in any way. That the questioning was conducted in his office with the windows open. His office is on the lower floor of the Police Building, the door opening on to the corridor. That Robert was questioned first and later the mother. That in the evening the two defendants were together sitting at the table

(Testimony of G. J. Richardson.)

and Narcotic Officer Wells did the questioning and the stenographer took it down. Asked if there was anything said to the effect that the woman would not be permitted to go to sleep until she signed the paper, he answered in the negative. He said she had her infant child in her arms. Asked if the child fussed or cried, he said "a very nice child in the office all the time". That he did not hear it cry at all. That the woman did not ask him at any time to use the telephone. Asked if he had any conversation with his woman in Hawaiian, he first said "no" and said later on he and Captain Martin did have such a conversation but the nature of the conversation was "just joking and talking". That this occurred after statements were taken. He said the boy's statement was taken first and it was taken after supper which he said was some time after 7 o'clock. He said John De Mello, sergeant of the recording office, took the statement down and after it was taken down it was handed to Robert to read and he read it. That he mentioned one or two words that he didn't understand to Mr. Wells and the meaning was [82] explained to him by Mr. Wells and having finished reading it, he signed it. Asked if any promises were made, he answered none were made by him. It couldn't have been made by him and if made by others, he didn't hear any. He said he didn't hear anybody tell the boy that unless he signed the statement he

(Testimony of G. J. Richardson.)

would stay in jail twenty-five years. Asked if the woman "during the time the statement was taken" asked permission to go to sleep and he said she did not. Said the boy and the woman were down at the Police Station in the afternoon. Asked if anything was said to the woman about going back to the jail for dinner and he said there was and said she didn't want to go. He said they wanted to take both defendants to jail for dinner; that she said she would buy her own if she could. That Captain Martin, in charge of the watch, sent somebody out, but he didn't know what they got for her. That the boy had dinner at jail. That both defendants were questioned in the afternoon. The questioning began between 3 and 4 December 19th. That Mr. Wells came in on a plane and the plane was late. That the witness left for home for dinner about half past 5 or 6; he lives 6.4 miles out of town, and after dinner he came back to the Police Station. Said the woman, during the questioning, did not act distressed or nervous or anything of the kind, nor did she complain about being exhausted or tired. Said the woman was not mistreated and made no statement about worrying about her baby. That the questioning by Mr. Wells was in a "very ordinary tone of voice". That there was no brow-beating. He said that in the evening the woman had told the son to tell the truth and said this to him a number of times. That he heard it two or three times himself. Asked if after hav-

(Testimony of G. J. Richardson.)

ing taken Robert Chang's statement in the evening if the woman was questioned as to the truth of the matters contained [83] in the statement and he said he didn't remember. He said he was fairly sure Robert's statement was taken first and immediately thereafter Mr. Wells proceeded to take her statement. That as soon as these statements were taken they were booked to the Federal authorities. That they were taken before the Commissioner "next day some time"; he didn't know the time of day. Said that when the statements were completed it was late in the evening and he released them from investigation and he charged them as Federal prisoners.

On cross examination he said his first contact with Mrs. Ah Fook Chang was on Wednesday evening when officer Pacheco picked her up, he being across the street at the time. That she was picked up on suspicion that she had something to do with the opium transaction. That they took her to the Police Station and booked her and from there she was taken to the jail with her baby. No questions were asked her that night. That she remained in jail from early Wednesday evening until the following afternoon when Mr. Wells arrived. He said Mrs. Ah Fook Chang was not taken to the Maunakea Rooming House and shown this opium. That Norman Godbold is United States Commissioner. That his office is right above the witness' office in the Police Department. That the distance from the Com-

(Testimony of G. J. Richardson.)

missioner's office to the point where the woman was arrested was "about four long blocks", and the jail was about a quarter of a mile from where the woman was lodged. That United States Commissioner Godbold was in Hilo during the days of December 18th, 19th and 20th. That the first questioning of the woman defendant occurred December 19th between 3 and 4 and was conducted by Narcotic Agent Wells. That Lee A. Pearson, federal officer, had participated in the arrest of Robert Chang. That Pearson, together with some Hilo police had stopped Chang, arrested him, entered his room and there [84] seized the opium. That when Mr. Wells arrived, the witness turned his office over to him. That Mr. Pearson was present during the afternoon. That the major part of the questioning was done by Mr. Wells though some questions were asked by Mr. Pearson and some by the witness. That the reason that the major part of the questioning was done by Mr. Wells was because it was a federal case and the witness had regarded it as a federal case from the beginning because it involved a quantity of opium. That the questioning continued in the afternoon up to dinner time. That the dinner recess was taken about 5:30. That the woman had denied any criminal connection with the opium transaction until that night. That that night the questioning was resumed after 7. That in the evening there was present Mr. Wells, Captain Martin, Sergeant DeMello and the witness himself. Asked what time he finally left his office to go home that night, he said "Oh, I should say some time

(Testimony of G. J. Richardson.)

after 10''. Asked if it wasn't nearer 12, he said it might have been; that he paid no attention to that. Asked if when she signed the statement, that ended the investigation, he answered: "That ended it" and he was free to go home. He said she had the infant baby in her arms all the time.

Q. You noticed we were unable to keep the baby in the courtroom today because it was crying. Didn't you notice it crying during those hours?

A. No sir.

Q. You mean that infant stayed there in your office from afternoon until around midnight and never cried?

A. I didn't hear it once.

Q. Well, could it cry and you couldn't hear it?

A. I could have heard it.

Q. Could it have cried and you not have heard it?

A. Well, I didn't hear the child cry at all; it wasn't fussing at all.

(The child suffering from a cold was fretful and by consent of counsel the mother took the child from the courtroom.) [85]

Asked if he didn't recall that she wanted to get word to her family so they wouldn't worry, the witness said, "she didn't mention a word to me." [86]

The court asked the witness if on December

(Testimony of G. J. Richardson.)

19th he noticed the woman nursing her baby and asked how many times he said: "Oh, a number of times. In the afternoon, she would take out her breast and nurse the child."

WILLIAM J. MARTIN,

the next witness called by the plaintiff in opposition to the motion, being duly sworn testified as follows:

That he is Captain of Police of the Hilo Police Department and was such in December last. That he knows the defendants. That he recalled the night in December when the two defendants signed statements in the Hilo Police Station. That about supper time, Robert Chang was taken back to jail for his dinner. That the woman didn't want to go back to jail and eat and so she stayed at the Station. Asked me if she could buy her own food, which he told her she could. One of the police officers went out for food for her. That he brought back a bag of cookies for the baby "and brought this Chinese cake they call mangu". He was asked what mangu consists of and he said "Well, it's mashed beans and * * *." He said the officer bought her Chinese cake called pepeau, which is made out of pork. That they made no restrictions with reference to the food; that she could order it. That she ate this food. He was asked if he was present when the statements were taken from the defendants in the evening and he said he was and he said that

(Testimony of William J. Martin.)

the defendants were in the room together when the statements were taken and besides the defendants in the room there were Mr. Richardson, Mr. Wells, Mr. Pearson and himself. That Mr. Wells and Mr. Pearson did the principal questioning. That he did not hear anyone, during the questioning, tell the woman that they wouldn't quit questioning her until she signed a paper. That the woman when she came to the Police Station that afternoon nursed the baby and that she [87] also nursed the baby in the Police Station. Asked if the baby cried or made any disturbance, said not that he knew of. That he was there approximately all the time. Asked if he heard anyone say that unless she signed the paper the boy would go to jail for twenty-five years, he said he did not. Asked if he talked to the woman in Hawaiian, he said she understood Hawaiian and he talked to her in that language but the conversation in Hawaiian was just ordinary talk, not serious talk, but talk "in a joking nature". That in questioning, nobody yelled out at her or anything like that. Said the investigation was over on December 19th about 10 o'clock.

The witness' attention was called to the fact that Mrs. Ah Fook Chang said she signed the purported confession about 11:30, the witness stated that he was positive it was not that late. He said that so far as he knew no effort was made to take the woman before United States Commissioner Godbold on December 19th. That he booked Mrs. Ah Fook Chang

(Testimony of William J. Martin.)

at the Hilo Police Station at 7:26 P. M. December 18th. That she was booked on suspicion that she had something to do with the opium found in Robert Chang's room.

ANTONE PACHECO,

the next witness called by the plaintiff in opposition to the motion, being duly sworn, testified as follows:

That he is a member of the Hilo Police Department and was a member on December 18th. That he was the officer who went into a store "and picked up Mrs. Ah Fook Chang on that date". That at the time she was talking to Mrs. Chun Doon. That at the time he went into the store, she was not drinking soda water or anything like that. That when he went in he asked Mrs. Ah Fook Chang if Robert Chang was her son and that she answered in the affirmative and inquired what was the matter. That he asked [88] her if she would go along with him and said "all right" and she picked up her baby and George Richardson was across the street and joined them and the three went up to Room 10 in the Maunakea Rooming House. That he did not yank her arm or drag her across the street or threaten her in any way. That when they went into the room the two shoe boxes of opium were open, exposing the opium. That from the room she and her son, Robert Chang, were taken to the Police Station and booked. That in the early part of December 19th, he was present in Mr.

(Testimony of Antone Pacheco.)

Richardson's office for a short time while defendants were being questioned, but was not there when they signed the first statement. Was there when they signed the first statement. Was there when there was some questioning in the afternoon. Asked if in the early evening of December 19th, he heard this woman say they wouldn't stop questioning until she signed the paper he answered in the negative and said the baby was not crying. Asked if at any time if he heard them say they wouldn't stop questioning until she signed the paper he said he didn't.

On cross examination,

the witness' attention was called to the testimony of Mr. Richardson that the woman was not taken to Robert Chang's room but was taken to the Police Station and booked the witness said he was sure they had taken her to the room. That he took her in custody about 7:15 or 7:20. That she was booked at the Police Station for investigation. That they suspected she had something to do with the opium found in her son's room and it was on that suspicion that she was taken into custody.

Q. You had no proof of that; it was just a suspicion, was it not?

A. Through the connections that mother and son were in the afternoon.

Q. You suspected that she probably had something to do with it?

A. Yes sir.

Q. And on that basis you arrested her?

A. Yes sir. [89]

(Testimony of Antone Pacheco.)

Asked if he had questioned the woman at all on December 19th he said he was talking to her a few minutes in Richardson's office. He was then asked if Mr. Wells conducted most of the investigation and said:

A. Well, I went out and I called Mr. Wells, when she told me that the reason why her boy and her was in trouble was because of a fellow in Honolulu wrote to her on Maui and told her to send her son down to get this opium.

The witness said that when she told him this, he went out and called Mr. Wells and told him what she said "and he took care of it."

On redirect

the witness was asked, regarding this conversation he had with the woman:

Q. What did she tell you?

A. She told me that a fellow from Honolulu had wrote to her for her to send her son down to get this opium, and then the son would meet her on Maui, going to Hilo; so then I came out and got hold of Mr. Wells, and Mr. Wells took care of it.

When this conversation happened the witness was alone with Mrs. Ah Fook Chang. That before she made the statement she denied ever having anything to do with the opium. That he recounted to Mr. Wells what the woman had told him. That

(Testimony of Antone Pacheco.)

when the woman made the statement to the witness, he didn't tell her "anything about if she didn't tell the truth or didn't talk that she would be in jail for a year or anything like that". Said this conversation occurred between himself and the woman shortly after 5 o'clock. That Mr. Wells was outside. That he couldn't tell exactly the time the conversation happened but he said it must have been before dinner. That he wasn't there when they questioned the woman after dinner but only in the afternoon. That the baby was in her arms all the time. "The baby looked nice; wasn't crying at all, didn't look sick". That she nursed the baby.

[90]

GEORGE J. RICHARDSON

was recalled for further evidence by the plaintiff. He was asked if at any time during the investigation he doubled up his fist and made a motion toward Robert Chang as if he was going to hit him and he said he did not.

WILLIAM K. WELLS,

the next witness called by the plaintiff in opposition to the motion, being duly sworn, testified as follows:

That he is a Federal Narcotic Agent and was in Hilo on December 19th last, arriving about 2 o'clock and questioned the defendants after his

(Testimony of William K. Wells.)

arrival, the questioning beginning about 3 o'clock or a little after. That the questioning occurred in Inspector Richardson's office. That during the questioning nobody in his presence said they would not allow Mrs. Ah Fook Chang to rest with her baby until she signed a paper nor did anybody double up his fist and threaten to hit Robert Chang. That the witness did most of the questioning. That there was no bull-dozing during the questioning. That that evening just before dinner, Officer Pacheco spoke to him with reference to a conversation he had just had with Mrs. Ah Fook Chang. That what Pacheco told the witness was that Mrs. Chang told him did not accord with the statement she had given the witness in the afternoon. That the questions asked in connection with the making of these statements were mostly asked by himself and Mr. Richardson. That there was no bull-dozing in obtaining these statements. That after the statement of Robert Chang was typewritten, he read this statement. That there were a few words that Robert Chang did not understand and asked the meaning of and the meaning was explained and the witness asked Robert Chang if it was true and he said "yes" and the witness asked him if he would sign and he said "Sure" and he signed the statement. He was asked if he had told Robert Chang that if he did not sign it he would stay in jail for twenty-five years and he said he did not, nor did he tell him that if he sign it he would go free and that he made no such statements to [91] Mrs.

(Testimony of William K. Wells.)

Ah Fook Chang. He said that Mrs. Ah Fook Chang told him that she wanted him to help her boy, not to put him in jail and the witness told her that he didn't have anything to do with it. He couldn't promise her anything. That he made no promises to either defendant or did anybody else make a promise to either of them in his presence. That while these statements were being taken the baby was in her lap, was never fretful nor crying. That while he questioned her in connection with the last statement he thought she nursed the baby twice. That he thought the last statement was obtained between half past ten and eleven o'clock at night. That after it was done he went home and charged the defendants the next morning before United States Commissioner Godbold with a violation of the Narcotic Laws. That next morning as soon as he got the charges ready he took the defendants before the Commissioner. That after he took Mrs. Ah Fook Chang's statement he read it to her and asked her if it was true and she said "yes".

A. * * * I asked her to sign it; she said "Yes" and she signed the statement.

He denied that he or anybody in his presence told her that if she didn't sign it she would stay in jail until she did, nor did anything like that take place.

(Testimony of William K. Wells.)

On cross examination

the following proceedings were had (Exception No. 4):

Q. Mr. Wells, have you that statement that she signed?

Mr. MOORE: I have the statement in my file.

Mr. BOTTS: I ask counsel to produce it, Your Honor.

Mr. MOORE: I feel, Your Honor, that I'm not called upon to produce it.

The COURT: The Court is not concerned with what's in the statement, but how it was obtained.

Mr. BOTTS: We submit that upon proceedings pertaining to a confession we're entitled to have the instrument itself produced in court for inspection, not only for the court but for the defendant himself and his counsel.

The COURT: That would be true when the statement is offered, but not prior to that. This is not a fishing expedition. [92]

Mr. BOTTS: It's not a case of a fishing expedition.

The COURT: Well, it looks very much like it when you ask to see the statement.

Mr. BOTTS: There's a specific statement alleged to have been taken from this witness, and we submit at this time on proceedings in advance of trial we're entitled to the production of that statement in court.

(Testimony of William K. Wells.)

The COURT: The Court's view of that differs from that diametrically.

Mr. BOTTS: Your Honor refuses to compel the production?

The COURT: Yes, that's the effect of the ruling.

Mr. BOTTS: Exception.

The COURT: Let the exception be noted.

The witness said he came to Hilo for the purpose of this case and was sent there under instructions of District Supervisor Stevenson on information received from Mr. Richardson of Hilo. That Mr. Pearson is a federal officer there of the Treasury Office in Hilo and often assists the witness in narcotic cases arising on the island and had taken part in this case and had met the witness at the airport that morning with Mr. Richardson. That he arrived at the Police Building in the afternoon and started questioning the defendants and took charge of the proceedings which was what he came over for. That he knows Mr. Norman Godbold and no effort was made to get him on December 19th. That he didn't go before him until the following day. He explained to the defendants that he was a federal narcotic agent investigating the case. The witness said: "Then I asked her who sent her boy Robert up to Hilo. She stated that Dang Wing Kong came to her house and asked her if her son wanted to go to Hilo." That she denied complicity in the jail when he first talked to her. That he told "her that night that what she said could be

(Testimony of William K. Wells.)

used against her, that if she didn't want to make any statement it was up to her." He was asked if that morning he prepared a written statement. He was asked if that appeared in the statement and he said: "I think, in the first or the second statement we put that down, and in the last statement I don't think I've got it on there." [93]

Q. Well, how many statements did you take from her?

A. About three.

Q. About three?

A. Yes.

Q. Well, were they all signed statements, you mean?

A. Well, no sir. Before they got to the end I thought they weren't telling the truth, and I caught them in little lies, and started questioning them again.

Q. Let me get this clear, Mr. Wells. There were three statements, I understand?

A. Yes sir.

Q. The first statement, when would you say that was taken?

A. A little after 3 o'clock.

Q. And that was never signed by her?

A. No sir, I don't think so.

Q. In that statement she denied that she had any complicity in this transaction?

A. Yes sir.

(Testimony of William K. Wells.)

He then testified that he took a second statement from her in which she also said she didn't have anything to do with the opium transaction. He was asked if he had that statement and said he did not that he destroyed it as he had also destroyed the first statement.

Q. So you took three statements, two of which were destroyed, and the third remains intact?

A. Yes sir.

Q. And it's in the third statement she admits participation in this opium transaction?

A. She admits it.

Q. When that was written up and signed, that completed your investigation, and she was charged with a narcotic offense?

A. Yes sir.

Q. But she wasn't brought before the Commissioner until next morning?

A. Until next morning.

The plaintiff having rested, the movant recalled

MRS. AH FOOK CHANG

to the stand and the following proceedings were had:

The witness was asked if anybody had told her when they were questioning her that she didn't have to make a statement if she didn't want to and didn't have to talk if she didn't want to and she said nobody said that, nor did anybody tell her that if she did talk it would be used against her in court. She was asked if anybody said "if you go ahead and

(Testimony of Mrs. Ah Fook Chang.)

talk that what you say can be used against you in court” and she said “I don’t know.” [94]

(Exception No. 5):

The evidence having been adduced the matter was submitted to the court for decision and the court did deny and overrule the said motion, to the denial and overruling of which defendants duly excepted and said exception was allowed.

The foregoing contains in narrative form all of the evidence adduced on the hearing of the motion to suppress evidence.

Thereafter the jury was empaneled and sworn and the trial of this case commenced on Tuesday, the 18th day of February, 1936, Willson C. Moore, Esquire, appearing for the plaintiff and E. J. Botts, Esquire, appearing for defendants; whereupon, to sustain the issue on its part, plaintiff called M. B. Bairos, Chemist of the Territorial Board of Health, and in lieu of his testimony, counsel for defendants stipulated that he would testify that he had examined two tins of the twenty-four tins of opium involved in this proceeding, and that such tins so examined contained smoking opium and opium prepared for smoking.

The plaintiff then called

R. TAKEMOTO,

police officer of the South Hilo Police Department, who has been so employed for thirteen years and was so employed on December 18th, 1935. He identified the defendant, Robert Chang, and said that on

(Testimony of R. Takemoto.)

December 18th he saw him in front of the Maunakea Rooming House on Kilauea Avenue in Hilo about 5 o'clock in the afternoon. He said his first conversation with him was about 7 o'clock in the evening. Asked what he was doing just prior to the conversation, the witness answered:

A. First I saw him he was coming out of Maunakea Rooming House; he came outside to the walk, he was also trying to cross Kilauea Avenue in front of Maunakea Rooming House. I went there and called him back, I told him. I told him we were police officers, "We want to look into your room, can you give us permission to go into your room?"

Q. And what did he reply?

A. He said "O.K." [95]

The witness said that Robert Chang led them to his room, which was Room No. 10 in the Maunakea Rooming House on the second floor.

Q. When you got to Room No. 10, what did you do?

At this point the following proceedings were had: (Exception No. 6):

Mr. BOTTS: At this point, if Your Honor pleases, for the record, we want to interpose an objection to anything that happened after they got to the room, on the ground that what transpired thereafter was an illegal search and seizure, so, if Your Honor pleases, that I won't have to interrupt this witness and the trial may proceed;

(Testimony of R. Takemoto.)

Mr. MOORE: I have no objection——

Mr. BOTTS: (continuing): that all evidence relating to any search there may be considered as coming in over my objection, and my exception duly noted.

Mr. MOORE: I have no objection.

The COURT: Yes; the objection will be overruled, and it may be noted that the same objection will obtain and the same ruling as to all evidence pertaining to what was found in room 10.

Mr. BOTTS: And the exception will be considered as applying?

The COURT: The exception will likewise apply.

The witness said that when he got to the door, Robert Chang took a key from his pocket, opened the door, went into the room, turned on the light and told us "Come in". They entered the room and when they got in the room they saw a suitcase lying on the floor and Robert Chang was asked what was in the suitcase and he "opened the suitcase" and told them to "Go ahead and see what was in it". The witness said that Mr. Lee A. Pearson, Federal Officer connected with the Alcohol Tax Unit, went to the suitcase and took out a box which he found contained twelve tins of opium. The witness identified the box. The witness then testified that another box of like size and appearance was found on a table in the room and that this box contained twelve tins

(Testimony of R. Takemoto.)

of opium, which he identified, his identification being both of the box and the opium and he [96] also identified the suitcase which contained one box of twelve tins of opium.

He said that at the time he went upstairs with Robert Chang, Mr. Pearson and Antone B. Pacheco, a police officer of South Hilo, were with him.

The witness was asked what happened after they found the twenty-four tins of opium and he said that George Richardson, Inspector of Police, had Robert Chang and Mrs. Ah Fook Chang, his mother, taken to the Police Station. He said he first saw Mrs. Ah Fook Chang "when she came up to the room", and after that she was taken to the Police Station.

On cross-examination,

he said that he first saw Robert Chang about 5 o'clock in the afternoon of December 18th on Kamehameha Avenue when the witness was with officers Pearson and Pacheco. Though he saw him at 5 o'clock, he didn't talk to him until 7 o'clock. He said that they followed him from 5 o'clock until 7 o'clock and this was done under direction of George Richardson, Inspector of Police of South Hilo. He said they followed him to his rooming house and took a position to wait until he came out.

Q. You knew he had opium in his room?

A. No, I didn't know that he had opium in his room.

Q. But you wanted to search his room didn't you?

A. Yes sir.

(Testimony of R. Takemoto.)

Q. And you wanted to search his room to see if he had opium?

A. Yes, I wanted to search it to see.

Q. The information you received from Mr. Richardson was to the effect that he had opium in his room.

A. Yes sir.

Q. And it was acting on that information that prompted you to ask him to let you go up and look at his room?

A. Yes sir.

The witness said that when he spoke to Robert Chang, Pearson was right behind him, but Pearson didn't say anything until they got into the room. When the opium was found, Mr. Pearson became its custodian. [97]

MR. LEE A. PEARSON,

Investigator, Alcohol Tax Unit, U. S. Treasury Department, was sworn and examined and testified that he was so employed on December 18, 1935. He identified Robert Chang. Said he first saw Robert Chang December 18th "coming out of Charlie Chang's Chop Sui". That a few minutes after 7 o'clock he was present when Robert Chang came out of the Maunakea Rooming House. Said that Takemoto showed him his police badge and asked him for permission to search his room and the boy replied "O. K. come on up". The witness said the boy led the way to his room on the second floor, opened the door with a key taken from his pocket,

(Testimony of Lee A. Pearson.)

went in, turned on a light and said "Come on in". The witness said he saw a suitcase lying on the floor which he identified as the one offered for identification in the case. The witness said he asked Robert Chang what was in the suitcase, and the latter said "Open it up". The witness said he asked Chang if he would open it up and defendant reached down and lifted the cover of the suitcase, disclosing a box wrapped in Christmas paper. The witness opened the box and found it contained twelve tins of opium. That thereafter officer Takemoto handed him a similar box taken from a nearby table and this also contained twelve tins of opium. He identified the boxes which held the opium and also the cans of opium. The opium remained in the witness' custody until he turned them over to Narcotic Agent, William K. Wells, on Sunday, December 22nd. He was shown a small memorandum book, which he said he turned over to Mr. Wells. He said a few minutes after they entered Robert Chang's room, Police Officer Pacheco came in with Mrs. Ah Fook Chang and Police Inspector Richardson. After her arrival "we took both of them to the Police Station", where they were booked for investigation to Police Inspector Richardson "as a member of the Hilo Police Department". He said he saw these defendants next [98] day in the afternoon when "we questioned them in Police Inspector Richardson's office". He said Robert Chang was first questioned. The questioning was by Police Inspector Richardson, Narcotic Agent William K. Wells and the witness. That

(Testimony of Lee A. Pearson.)

Wells did most of the questioning. That he arrived in Hilo by airplane December 19th at 2 P. M. He was met at the airport by the witness and the questioning of the defendants began shortly before 4 P. M. on December 19th. That the questioning was conducted in an ordinary tone of voice, the windows were open, the door was alternately closed and opened. The witness said that "I told the defendants they didn't have to make any statement if they didn't want to"; that he, the witness wanted to warn them of their constitutional rights and that if they made statements they would have to be made voluntarily and of their own free will and that no promise could be made to them of anything. The witness denied that any promises were made to the defendants during the time he was there in the afternoon, either by him or anybody else. Asked if anything was said to the woman defendant to the effect that they would not cease questioning her until she signed a statement, he answered that nothing of the sort had been said to her while he was there in the afternoon. He was not present in the evening when she was questioned. The witness said that Robert Chang was questioned first; asked where the mother was in the afternoon while Robert Chang was being questioned, he answered: "at first she was there. I believe during all of the questioning she was in the Receiving Room at the Police Station."

Q. That's where you call the booking desk is located?

(Testimony of Lee A. Pearson.)

A. At the booking desk.

Q. Then when you started questioning (her) where was Robert?

A. Robert was removed to the booking desk room.

The witness said that he left shortly after 5 o'clock in the afternoon and both defendants were still at the Police Station. [99] That he did not return until late that night when the questioning had finished.

On cross-examination, the witness said that he began the investigation of this case about 1 o'clock in the afternoon but did not see Robert Chang until 5.

Q. You were investigating the case, I take it?

A. We were investigating Mrs. Ah Fook Chang.

He said he didn't apply to the Commissioner for a search warrant. That he didn't have any facts to obtain the search warrant on; that Norman Godbold is United States Commissioner at Hilo and his office is right above Mr. Richardson's office in the Police Station there. In the evening at approximately 7 o'clock on December 18th, both defendants were taken to the Police Station and booked for investigation and lodged in jail. That the witness didn't make any effort to take them before a United States Commissioner, not even for the purpose of charging them, nor did anybody else, nor was any-

(Testimony of Lee A. Pearson.)

thing done in this regard the next morning. He said he knew defendants were ultimately taken before Norman Godbold and charged, which was on Friday, December 20th. He was asked when he first cautioned the witnesses about their constitutional rights with reference to making statements. He said it was about 4 P. M. Thursday afternoon. Asked again the language Takemoto used in asking Robert Chang for permission to search his room, he answered: "To the best of my recollection, he said 'Can we have permission to search your room?'"

Q. Did he say anything about his constitutional rights then?

A. He did not.

Q. Anything about the Fourth and Fifth Amendment provision on that occasion?

A. No sir.

On redirect examination

the witness testified that in the afternoon when the woman was questioned, she had the baby with her all the time. The witness said the baby seemed very healthy, didn't cry or fuss at all. [100]

The next witness called was

GEORGE A. RICHARDSON,

Inspector of Police, County of Hawaii, who has been with the Police Department between fifteen and sixteen years and was connected with it in December, 1935. He identified the defendant. He said he first saw the defendants around 7 o'clock P. M., December 18th. That he first saw Mrs. Ah Fook Chang, who was sitting in a Chinese

(Testimony of George A. Richardson.)

store on Kilauea Avenue. She came out of the store accompanied by Police Officer Pacheco. Said they took her upstairs in the lodging house and then took her and Robert Chang to the Police Station to be booked for investigation to the County Police and that they remained county prisoners that night. The next day, Narcotic Officer W. K. Wells arrived from Honolulu by plane and that evening he booked them as federal prisoners. He said that after Narcotic Agent Wells arrived, the defendants were questioned at the Police Station and in the witness' office, the questioning starting between 3 and 4 o'clock in the afternoon on December 19th and present during the questioning were the witness, Mr. Wells, Mr. Pearson, Mr. Pacheco, Officer Takemoto and a stenographer named DeMello. He said Mr. Wells conducted most of the questioning, but the various ones present asked questions, including himself. In the afternoon the boy was questioned first and later on the mother. During all the time she was questioned the baby was in her arms. Asked if it cried or fussed, he said it did not and that it was a very well behaved child. He said that after they went to dinner and returned about 7 P. M., they resumed questioning the defendants. Asked if at any time during this questioning he told the woman he wouldn't quit until she signed a paper, he said no and that he didn't hear anybody else make such a statement. The doors and windows were open while the questioning was going on and the interrogation was conducted in the average tone of voice, without

(Testimony of George A. Richardson.)

any "bull-dozing" or "bull ragging". He said that after the questioning was interrupted for dinner, the woman did not go back to [101] jail but asked if she could rest in the Police Station though the boy went up to jail for his dinner.

He then testified that on December 18th, he received information in the morning of that day that defendants had opium, but his information was not positive as to where it was and it was under his direction that officers of his department kept defendants under surveillance. He said that in the afternoon of December 19th, Mr. Wells took two statements from the defendants and he was present while these were being taken. That he first took Robert Chang's. That after it was taken, it was given to him to read; that he read it and a few words he didn't understand, he asked Mr. Wells to explain to him, which Mr. Wells did, following which he signed it. That there was no force of any kind used. He said the defendant read the statement, was then asked by Mr. Wells if he was willing to sign and he signed it. He identified the paper signed by defendant, which was later introduced in evidence as plaintiff's exhibit "A". He then said that after Robert Chang's statement was taken a statement was taken from Mrs. Ah Fook Chang and after it was taken it was given her to read and she read it and after reading it she was asked if she was willing to sign it and she signed it. That no force or anything of the kind was used. The witness also identified this statement, which was later

(Testimony of George A. Richardson.)
introduced in evidence as plaintiff's exhibit "B".

The witness on cross examination said that Mr. Wells took three statements from Mrs. Ah Fook Chang, the first two he destroyed and the last one being U. S. Exhibit "B". The first statement was taken from Mrs. Ah Fook Chang in the afternoon after Mr. Wells' arrival and in this statement, she denied any connection with the opium. The witness was asked if later in the day Mr. Wells didn't take a second statement from Mrs. Ah Fook Chang in which she also denied any [102] connection with the opium and he said he didn't know about the second statement. He said the opium was turned over to Mr. Pearson because they had no facilities to keep it at the time because the clerks who had charge of the safe were off duty and that Mr. Pearson took it up to the Federal Building to put in the safe there. That he regarded this as a federal case from the beginning.

Q. In other words, opium seized in these quantities have been subject for federal prosecution?

A. It's been the custom.

Q. And that's how it was treated in this case?

A. Yes sir.

Q. Consequently, Mr. Pearson became custodian of this opium, and then when Mr. Wells arrived you let him take charge of the proceedings?

A. Yes sir.

(Testimony of George A. Richardson.)

Q. Because you regarded this as a federal case?

A. Yes sir.

Q. And Mr. Wells is a narcotic officer?

A. Yes sir.

Q. And that was his special duty?

A. Yes sir.

Q. This woman was put in jail, we understand, about 7 o'clock Wednesday afternoon?

A. Yes sir.

Q. She was charged with no offense, nor was any bail fixed for her, but she was kept in jail overnight?

A. Yes sir.

Q. And that same thing continued all next day?

A. Correct.

Q. And when Mr. Wells arrived, he didn't take her before Mr. Norman Godbold and charge her?

A. No sir.

Q. And he arrived about 2 o'clock or 3 o'clock you say?

A. About 2.

Q. And they questioned her and questioned her until late that night?

A. Well, with a rest period of about an hour for dinner.

Q. And the questioning ceased when she finally signed the statement?

A. Yes sir.

(Testimony of George A. Richardson.)

Q. But she still wasn't taken before the Commissioner until next day?

A. Next day.

Q. She was lodged in jail with an infant baby that she is carrying now?

A. Yes, sir.

Q. And the baby continued there with her until Friday, when she made bail and was released?

A. Until Friday, yes sir. [103]

On redirect,

he said that they first questioned the boy during which time the woman wasn't being questioned; then the woman was questioned, then after dinner they started to question the boy first and while they were questioning the boy the woman was not being questioned and that when they finished with the boy they began questioning the woman again. He said that during this questioning no request was made for the use of the telephone or anything like that. That the only request she made was for something to eat and that the witness asked Captain Martin to get it for her. In reply to the court's question, the witness said that United States Commissioner Godbold's office is on the second floor of the same building that his office is in. That his office is on the ground floor with the windows looking out into the courtyard. That the door opens on the

(Testimony of George A. Richardson.)

corridor that goes up to Judge Godbold's office. He said that it has been the practice when narcotics or liquor are very small to handle them in the territorial courts, but when large to turn it over to the Federal authorities and in this case he rang up Mr. Stevenson, head of the local division of the Federal Narcotic Office, notifying him of the case and Mr. Wells came over the next day. That the population of Hilo is between seventeen and eighteen thousand. He said that the police sometime make investigations and turn the case over to the Federal Government and visa versa and that in this particular case the investigation was being made by him as a Hilo police officer assisted by Mr. Pearson, a federal officer.

The next witness was

WILLIAM J. MARTIN,

Captain of Police in Hilo who held that office on December 18th. That on that night he booked Robert Chang and Mrs. Ah Fook Chang for investigation at the request of Mr. Richardson. That the booking was made at 7:26 P. M. That the witness was on duty the next evening. That around dinner time next evening Mrs. Ah Fook Chang made a request for food and that he detailed an officer to buy the food she wanted, which consisted of cookies for the baby and some Chinese food, "manju they [104] call it; it's chopped rice, beans, and pork * * * and pepeau * * * made of pork and rice", which she ate. That he came on watch at 4 o'clock

(Testimony of William J. Martin.)

in the afternoon of Thursday, December 19th. That the baby was with the mother and wasn't fussy. That the mother nursed the baby a couple of times while he was there. That he was present in the evening when a statement was taken from the defendants. That he did not, nor did anybody in his presence, tell the woman that she wouldn't be permitted to go out "unless she signed the paper" nor did he hear anybody say that unless she signed the paper her boy would be put in jail for twenty-five years. That there was no bull-dozing or bull-ragging; that is, hollering at either of the defendants. That the questions were asked in an ordinary tone of voice. That he was present when Robert Chang made a statement. After it was typed they gave it to Robert Chang to read and he read it.

Q. Did he ask any questions about any of the wording or anything in it?

A. He did not.

He said he signed it after he read it and identified the statement, which later came in evidence as plaintiff's exhibit "A". He saw the boy sign it. That when he signed it, he wasn't threatened in any way. That the defendants were booked to Mr. Wells on December 20th. His attention was called to Mr. Richardson's testimony that they were booked to Mr. Wells late the 19th, but the witness said that it was "the morning of the 20th".

(Testimony of William J. Martin.)

On cross examination, the witness said there is no federal jail in Hilo and that federal prisoners are held in the Hilo jail as an accommodation.

Q. So, in this case, or other cases where Mr. Pearson or a federal officer brings in a prisoner, he is confined in that jail?

A. Yes sir.

That Robert Chang signed his statement about 10:30 on December 19th and that Mrs. Ah Fook Chang signed a statement later than that and after she signed the statement "that ended the business". That [105] she had the baby with her all the time holding the baby in her arms. That the baby had been with her in jail Wednesday evening.

ANTONE B. PACHECO

was the next witness called by the plaintiff. He is a police officer and identified the defendant, Robert Chang, and said that on December 18th about 7 o'clock Police Officer Takemoto spoke to defendant. Said that defendant was crossing the street from the rooming house and that Police Officer Takemoto in company with Pearson and the witness stopped him and "told him that if he would give us permission to go up and search his room".

Q. What did he say?

A. Yes sir—O. K.

(Testimony of Antone B. Pacheco.)

He then gave substantially the same account of entering the room and finding the opium as was given by the witnesses Takemoto and Pearson. He said that after finding this opium he went downstairs "and picked up Mrs. Ah Fook Chang", finding her "inside of Chung Doon's store where she was talking to Mrs. Chung Doon". He said he asked Mrs. Ah Fook Chang if Robert Chang was her son and she answered "yes sir", and he said he told her he wanted her to come upstairs because he wanted to see her. He denied that he got hold of her arm and yanked her or anything like that saying she simply accompanied him to room 10 of the Maunakea Rooming House where they stayed for a few minutes and then went to the Hilo Police Station where the two defendants were booked. He was asked if he had a conversation with Mrs. Ah Fook Chang on December 19th just before dinner time and he said he did while she was sitting in Inspector Richardson's office with her baby. That the witness had seen her around the Police Station during the day and the baby behaved "nicely" without crying or fussing. That he was in Mr. Richardson's office during the afternoon for a short while during the questioning of the defendants. That from that time he didn't hear anybody threaten Mrs. Ah Fook Chang to the effect that if she didn't sign the paper "they wouldn't let her go to rest or go to rest with her baby". He didn't hear anybody tell her that unless [106] she signed the

(Testimony of Antone B. Pacheco.)

paper her boy would be put in jail for twenty-five years. That he saw the woman nursing her baby during the afternoon. That just before supper time he had a conversation with her in which she told him "that a fellow from Honolulu had wrote to her on Maui for her to send her son to Honolulu to get these two packages and that she would meet him on Maui and then they went to Hilo and that's how she got in trouble." That the witness then told Mr. Wells, he was outside of the office at the time, about this conversation "and Mr. Wells went in and took care of it". That after dinner the witness was not present during any of the questioning. That during the questioning in the afternoon he didn't hear anybody making any promise that if they talked they wouldn't be prosecuted or anything like that.

MR. C. T. STEVENSON

about to be called as the next witness for the government, it was stipulated that if called he would testify that he received the suitcase, the tins of opium, the paper boxes, the notebook and steamer ticket, all later being admitted in evidence in this case as plaintiff's exhibits G, C, D, F and E. That there were twelve tins in each box of opium, one from each box having been taken out for use in making tests to determine contents.

MR. WILLIAM K. WELLS,

the next witness called for the plaintiff, testified that he had been a federal narcotic agent since 1921 and came to Hilo December 19th, 1935, by plane at the request of his superior, Mr. Stevenson, arriving about 2 P. M. on that day. After his arrival he questioned both defendants beginning about three or four o'clock in the afternoon in Inspector Richardson's office in the Hilo Police Station. That he first questioned Robert Chang and later Mrs. Ah Fook Chang. That Investigator Pearson warned them first and told them they didn't have to make any statement that could be used against them. Later on the witness said he told them the same thing. That he made no promise to either of the defendants. Asked if either [107] of the defendants asked him to assist either one of them, he said the mother did; that "she kept telling me to help her son, not to put her son in jail". I told her I couldn't do that, I didn't have anything to do with it and that I couldn't make any promises. That during the questioning he talked to her in a low regular voice such as he was using on the witness stand, which the judge referred to as a conversational tone. The windows of the room in which these questions were being asked were open and sometimes the door was open. That the witness did most of the questioning though he was assisted by Mr. Richardson and Mr. Pearson. That in the afternoon, the defendants each made a statement in which they denied they had anything to do with the opium. That just before

(Testimony of William K. Wells.)

dinner he had a conversation with Mr. Pacheco, which dealt with a conversation the latter had had with Mrs. Ah Fook Chang. He was shown a notebook and said that it had been handed to him by Mr. Pearson and Robert Chang had acknowledged that it was his. He was shown a page in the book with the name "Hong Yin Pin" written across it, and said that that name was written in it when he received it. The witness said that the defendant admitted that he wrote the name "Hong Yin Pin" in the book. That after dinner he questioned the two defendants again. He denied that at any time during the afternoon or evening that he or anyone in his presence told the woman defendant that unless she signed the paper she wouldn't be permitted to rest with her baby, or that unless she signed a paper her boy would go to jail for twenty-five years. The witness said that "the baby wasn't crying when we questioned Mrs. Chang. It seemed a very quiet baby". That she nursed the baby several times while being questioned. That he left Hilo Sunday, December 22nd, and that Mr. Pearson turned over to him the evidence that was seized in the case. That upon his arrival in Honolulu he turned the articles received from Mr. Pearson to District Director Stevenson and they are now in the same condition when he turned them over to Mr. Stevenson as [108] when he received them. He identified a paper of the Inter-Island Steamship Company, which he said was found in Robert Chang's suitcase and Robert Chang had said that's the receipt he got from the

(Testimony of William K. Wells.)

Inter-Island from Kahului to Honolulu, having reference to the Inter-Island Steamship Company. That on the evening of December 19th, he took a statement from both Mrs. Chang and Robert Chang. That he took altogether three statements from Robert Chang, the first in the afternoon before dinner and the second after dinner and the third and last one later at night. The first and second statements weren't completed but the third statement was his final statement in which he acknowledged complicity in connection with the opium found in his room. When this statement was finished, it was handed to him and he read it. "There were a few words he didn't understand and we got him right on it", which the witness said were explained to him warning him of his constitutional rights and he was asked if he would sign it and he said he would and he signed it.

Q. Now calling your attention to the writing on the reverse side of the second page at the top of which appears the date "December 20th, 1935" where was that taken?

A. That was taken up in the city jail.

Q. That is, up mauka, up Waianuenuue?

A. Yes sir. We slipped up that night on these questions, so I went up there the following morning with Officer Takemoto, and, in the presence of Jailor Rosehill, I questioned defendant Robert Chang, and after I got through—I let him read the statement, asked

(Testimony of William K. Wells.)

him if it was true, he said "Yes", and I asked him to sign it, and he signed it.

The witness said that the defendant was not threatened in any way in the taking of these statements by him or by anybody else in his presence. That he told defendant he didn't have to say anything; he didn't have to sign if he didn't want to.

(Exception No. 7):

Immediately thereafter the following proceedings were had: [109]

Mr. MOORE: At this time we offer United States Exhibit 7 for Identification, in evidence.

The COURT: What is it?

Mr. MOORE: It's the statement of Robert Chang.

Mr. BOTTS: We object to it on the ground that it purports to be a confession that was obtained while defendant was under illegal restraint and was not voluntarily given within the meaning of the law, and amounts to a violation of the defendant's rights under the Fourth and Fifth Amendments of the Constitution, and the 14th Amendment of the Constitution; that it was obtained coercively.

The COURT: Are you through with your objection?

Mr. BOTTS: Yes sir.

The COURT: The objection is overruled; the exhibit will be admitted.

Mr. BOTTS: May the record show we note an exception?

The COURT: Let the exception be noted.

The statement of defendant,

ROBERT CHANG,

having been admitted in evidence, the same was read to the jury in words and figures as follows: (U. S. Exhibit "A"):

"Statement of Robert Chang alias Yuk Moon taken in the Hilo Police Station by Narcotic Agent William K. Wells at 8:30 P. M. December 19th 1935.

Q. What is your name?

A. Robert Chang alias Yuk Moon.

Q. Where do you live?

A. Vineyard Street, Waialuku, Maui.

Q. When did you come to Hilo?

A. December 18, 1935.

Q. Did you sail from Maui or Honolulu?

A. Honolulu.

Q. How did you come to leave Honolulu for Hilo instead to Maui?

A. I left Maui on the 16th of December 1935 went to Honolulu and left for Hilo on the 17th of December 1935 arriving in Hilo on the morning of the 18th, 1935.

Q. Why did you go to Honolulu?

A. My mother asked me if I wanted to go to Honolulu to bring some opium to Hilo, so I went and she gave me \$50.00 for my expenses I was to go to the Oahu Garment Co. on 78 N. King Street and to look for a man by the name of Hong Yin Pin, and he was to give me this stuff. (In this blue note book found in your

(Testimony of Robert Chang.)

dress suit case the name of Hong Yin Pin is written in it is this the man you was to see yes, book shown to Robert Chang with the name of HONG YIN PIN" written in it and identified by him as being his property.)

Q. Did you meet this man?

A. I met a man I do not know who he was and I showed an envelope with Chinese and Haole written on it I [110] asked him is that your name, he said yes and wanted me to give him the envelope and I tore it up. Then he said when you want the stuff, I said by 1:30 in the afternoon he told me to follow him but I did not want to so he told me to meet him at the corner of Kukui and Nuuanu Avenue and at Flower shop which is on the corner, I waited there a long time in a taxi, then he came to my car and signal me to come I followed him and he took me to a house upstairs to his room and told me to wait there and he would telephone for the stuff. Then he left me and I was alone in the room and his pictures were on the wall. Then he came back and asked me for the money so I told him that I could not give him the money then he said we go downstairs then we went in the back of the flower shop and the two packages wrapped in Xmas paper were there then he said give me the money I took the envelope which I had in my pocket and opened it before I had it opened he told me to give it to him and I gave it to him. Then he told me to go.

(Testimony of Robert Chang.)

Q. Did he tell you where to bring this stuff to Hilo?

A. I don't remember.

Q. Then where did you go?

A. I went to my friend's house by the name of Henry Ching, my suit case was in the parlor and I put one package in the suitcase and one I held in my arm, then I went to the boat.

Q. Did you see your mother on the boat at Mala that night?

A. Yes.

Q. Did you talk with your mother that night on the boat?

A. Yes.

Q. Did you and your mother stay at the same hotel when you arrived at Hilo?

A. No.

Q. Did you come to Hilo town alone or with your mother from the boat?

A. I came alone.

Q. Where did you go and stay in Hilo?

A. Mauna Kea Rooms.

Q. What time was Mrs. Chun Doon supposed to come and get the stuff?

A. I don't know sometime around 7:00 P. M.

Q. How much money did you deliver to Hong Yin Pin in Honolulu?

A. I do not know how much money was in the envelope.

Q. Who gave you this envelope containing the money?

(Testimony of Robert Chang.)

A. Dang Wing Kong, at his house in the back of the Public Service Station, Wailuku, Maui.

Q. What was his instructions to you?

A. He told me to go to 78 North King Street Oahu Garment Company and see a man by the name of Hong Yin Pin and to be sure that I was to see Hong Yin Pin personally, then he gave me two envelopes one containing money and the other Hong Yin Pin's address, then I sailed for Honolulu.

Q. When you arrived in Honolulu what did you do?

A. I went to the Oahu Garment Company and went downstairs and asked a Chinese man if he was Hong Yin Pin he said no he is upstairs so I went upstairs and found Hong Yin Pin and I gave him an envelope and gave him [111] the code word given me by Dang Wing Kong, then I went upstairs with Hong Yin Pin and he showed me his cloth material then he told me to come up later to the corner of Kukui Street and Nuuanu Avenue at a flower shop and wait for him there.

Q. Who paid your expenses for this trip?

A. Dang Wing Kong he gave me \$50.00.

Q. What else did Dang Wing Kong tell you?

A. He told me that if I got the money for Mrs. Chun Doon (\$3,000.00) to take it back to him.

(Testimony of Robert Chang.)

Q. In the first part of this statement you stated that your mother gave you the \$50.00 for your expenses is that true or not?

A. No, that is not true, Dang Wing Kong gave me the money in Maui.

(Sgd) ROBERT CHANG
(ROBERT CHANG alias
YUK MOON)

Subscribed and sworn to before me this 19th day of December, A. D. 1936.

(Sgd) WILLIAM K. WELLS

(Sgd) WM. J. MARTIN

Witness.

(Sgd) JOHN B. DEMELLO.”

Said U. S. Exhibit “A”, which was the confession of Robert Chang, having been read, the following proceedings were had:

(Exception No. 8):

Mr. BOTTS: At this time, if Your Honor pleases, there are references in this statement to a co-defendant. I ask that the jury be instructed that a confession, if admissible at all, is only admissible against the defendant who makes it and is only evidence against him;—

The COURT: That is the law.

Mr. BOTTS: And no references in that statement applying to Mrs. Ah Fook Chang may be considered by the jury as evidence against her.

The COURT: Mr. Wells, was Mrs. Ah Fook Chang present when this statement was made?

A. Yes sir.

The COURT: Made in her presence and hearing?

A. Yes sir.

The COURT: Did she take any part in the conversation whatever?

A. Several times there she kept telling the boy, "You tell the truth," "you tell the truth"; but the last part of that statement on the other side she wasn't present.

The COURT: Then, gentlemen of the jury, as to the statement made at the jail,— [112]

Mr. MOORE: You mean, this one on the reverse side, that's on December 20th.

The COURT: (Continuing): Witness by Wells alone, may not properly be considered by you as evidence against the mother but only as against the boy. Only such statements as were made in the presence of the woman could at all be considered as evidence against her.

Mr. BOTTS: Now, if Your Honor pleases, where does that leave us?

Mr. MOORE: If you let me ask a couple of questions, Mr. Botts, I think I can clear this up.

Mr. BOTTS: All right.

Mr. MOORE: Mr. Wells, during and after this statement of Robert Chang that has now been admitted in evidence,—that's not with reference to the seizure, but the other one—was Mrs. Ah Fook Chang questioned as to the truth of that?

A. Yes sir.

Q. And what did she have to say in that regard?

A. She said that was the truth.

Mr. MOORE: Does that answer your question, Mr. Botts?

Mr. BOTTS: No. The previous testimony was that it was taken separately.

(Sotto voice discussion between counsel)

Mr. BOTTS: Well, I'll renew my motion, if Your Honor pleases, so there'll be no question about it. I ask that Your Honor instruct the jury that any statements made in that purported confession of Robert Chang can only be considered as against him and not as evidence in any way as against Mrs. Ah Fook Chang.

The COURT: Gentlemen of the jury, you will consider that as the instruction of the Court, with this exception; that where the statement was made in the presence and hearing of Mrs. Ah Fook Chang, it may be considered against her also.

Mr. BOTTS: To which we note an exception,——

The COURT: Let the exception be noted.

Mr. BOTTS (Continuing): on the ground that where one is under illegal restraint, unlawfully imprisoned, no duty is imposed upon him, where his fellow likewise is imprisoned, to say anything.

The COURT: That objection is also overruled.

Mr. BOTTS: Exception.

The COURT: Exception noted.

Thereafter the witness was shown a paper, which latter was put in evidence as U. S. Exhibit "B" and was asked if he had ever seen it before. He answered that this was the statement he took from Mrs. Ah Fook Chang December 19, 1935. That he started taking [113] it at 9:50 in the evening. He said the statement was typed out, but they questioned her for quite a while before it was typed; that after it was typed he read the statement to her and she read it and they asked her if it was true and she said "yes". He asked her if she would sign it and she said "All right" and she signed it and it was witnessed by Martin and De Mello and the witness. Said this statement was taken in the same manner as Robert Chang's statement was taken. At this point he offered the statement in evidence and the following proceedings were had:

(Exception No. 9):

Mr. BOTTIS: To the offer, if Your Honor pleases we respectfully object, on the following grounds: that it affirmatively appears that the statement was taken from this defendant Mrs. Ah Fook Chang while she was under illegal restraint and arrest, and the same was therefore obtained coercively and not voluntarily, and was therefore not a voluntary statement which can be used in evidence against her. We object to the admission of it, if Your Honor pleases, on the further ground that it appears from the statement itself that the defendant Mrs. Ah Fook Chang was not told immediately preceding

the taking of the statement that she need not make a statement if she didn't want to but that if she did make a statement it might be used against her in a criminal proceeding. In summary, we say that it affirmatively appears from all the evidence in this case that the statement was not the free and voluntary statement made by this woman, but was coercively obtained and amounts to an involuntary statement and an illegal search and seizure of the defendant's mind and memory, in violation of her rights under the 4th and 5th and the 14th amendments of the Constitution.

The COURT: While the Court realizes there is some authority to sustain these objections, the Court is of the opinion that the weight of the authorities is the other way. The objection is overruled in each respect.

Mr. BOTTS: May we note an exception to the ruling of the Court.

The COURT: Let the exception be noted. The exhibit will be admitted.

The statement of

MRS. AH FOOK CHANG

having been admitted in evidence the same was read to the jury in words and figures as follows: (U. S. Exhibit "B"): [114]

"Statement of Mrs. Ah Fook Chang taken in the office of the Police Inspector George J. Richardson at Hilo, Hawaii, on Thursday eve-

(Testimony of Mrs. Ah Fook Chang.)

ning December 19, 1935 at 9:50 P. M. by Narcotic Agent Wm. K. Wells in the presence of Capt. Wm. J. Martin, Geo. J. Richardson, John B. de Mello.

Q. What is your name?

A. Mrs. Ah Fook Chang alias Kam Yuen.

Q. What is your husband's name?

A. Ah Fook Chang.

Q. Where do you live?

A. Vineyard Street, Wailuku, Maui.

Q. When did you come to Hilo.

A. Yesterday morning, December 18, 1935.

Q. When you arrived in Hilo where did you go to stay?

A. Okino Hotel Kamehameha Avenue.

Q. Have you a son, by the name of Robert Chang?

A. Yes.

Q. Was Robert Chang, on the same boat with you when you came to Hilo?

A. Yes.

Q. Where did you get on the boat at Mala or Honolulu?

A. Honolulu.

Q. Did you know that Robert was going to be on that boat?

A. I was not sure, but I thought that he might be on the boat.

Q. Did you talk to your son Robert on the boat that night?

A. Yes, he came to my stateroom and we had a talk there.

(Testimony of Mrs. Ah Fook Chang.)

Q. Do you know why your boy was on the boat that night?

A. One day last week in Maui a man by the name of Dang Wing Kong came to my house and asked me if my son Robert wanted to go to Honolulu and get a package and bring same to Hilo I said that it was up to the boy if he wanted to I went home and asked Robert if he wanted to go to Honolulu and he said sure. Then I told him to go and see Dang Wing Kong.

Q. Who paid for Robert's expenses for this trip?

A. I did not see the money but Robert told me that Dang Wing Kong had given him the money.

Q. Who was your son to see in Honolulu when he got there?

A. I don't know but my son showed me an envelope with the address of the Oahu Garment Company and another envelope with the name of Hong Yin Pin on it.

Q. Who were you and your son going to deliver this opium to in Hilo?

A. To the wife of Chun Doon who has a store in Hilo by the railroad track.

Q. Did Mrs. Chun Doon write to you people to bring this opium up?

A. No, she wrote to Dang Wing Kong of Wailuku, Maui.

Q. What did Dang Wing Kong tell you to do when you get to Hilo?

(Testimony of Mrs. Ah Fook Chang.)

A. He told me that the opium was worth \$3,000.00 and if she gave me the money to deliver the money to him personally.

Q. Is this all you know in regards to the 24 tins of opium brought to Hilo by your son Robert and yourself on December 18, 1935?

A. Yes this is all. [115]

Q. This statement that you make is the whole truth and nothing but the truth?

A. Yes.

(Sgd) MRS. AH FOOK CHANG.

Subscribed and sworn to before me this 19th day of December A. D. 1935.

(Sgd) WILLIAM K. WELLS.

Witness:

(Sgd) G. J. RICHARDSON.

(Sgd) WM. J. MARTIN.

(Sgd) JOHN B. DEMELLO."

(Exception No. 10):

The statement having been admitted in evidence, the following proceedings were had:

Mr. BOTTS: I now ask Your Honor to instruct the jury that any statements made in this statement Exhibit "B" in which Robert Chang's name appears in an incriminating way, that the jury be instructed that it is not evidence in any manner, shape, or form against Robert Chang and can only be considered against Mrs. Ah Fook Chang, and that the weight of this statement, that is, what value

if any the jury wants to place upon it, is solely within the purview of the exclusive power of the jury.

Mr. MOORE: We have no objections to the jury being so instructed, for the reason that with this particular statement there is no evidence that Robert Chang was asked whether or not this statement was correct. It appears with reference to the other statement that after it was completed and read to the defendant Robert Chang, the defendant Mrs. Ah Fook Chang was asked whether or not that statement, which is United States Exhibit "A", was correct, and she stated that it was; so that as to this particular statement we have no objections to the jury being instructed that, insofar as the defendant Robert Chang is concerned, it cannot be considered as against him. [116]

The COURT: Before ruling on this matter I'd like to ask the witness a question.

Q. At the time this statement was read to Mrs. Ah Fook Chang was Robert Chang present?

A. Yes sir.

Q. He heard the statement read to her?

A. He was sitting in the room on my right; Mrs. Ah Fook Chang was on the left of the table.

The COURT: It appearing that this statement was made in the presence of the defendant Robert Chang, the instruction will not be given.

Mr. BOTTS: Exception, if Your Honor pleases.

The COURT: Exception noted.

(Exception No. 11):

Thereafter the plaintiff offered in evidence as U. S. Exhibit "C" a box containing twelve tins of opium and the following proceedings were had:

Mr. BOTTS: We object to the admission of that evidence, Your Honor, it being apparent from the evidence that this was articles seized and taken from the defendant Robert Chang in pursuant of an illegal search and seizure, and we say that's inadmissible against him or the co-defendant, on the ground that the search and seizure was illegal and in violation of the defendant's rights under the 4th and 5th Amendments of the Constitution.

The COURT: That is the question that has previously been determined by the Court.

Mr. BOTTS: Yes, Your Honor. I asked, to protect my record.

The COURT: Yes; and it seems to the Court that the evidence given on this trial is even stronger in favor of a legal search than it was on a previous hearing.

Mr. BOTTS: We note an exception to Your Honor's comment as being improper in the presence of the jury.

The COURT: Let the exception be noted. The exhibits will be admitted over the objection of the defendant, the defendant being given the exception he desires.

Mr. BOTTS: And exception.

(Exception No. 12):

Thereafter the plaintiff offered in evidence as U. S. Exhibit "D" the remaining twelve tins of opium and the following proceedings were had:

[117]

Mr. BOTTS: We object to it on the ground that it's incompetent, irrelevant, and immaterial; that it affirmatively appears that the articles offered in evidence were the fruit of an illegal search and seizure as disclosed by the evidence and made in violation of the constitutional rights of Robert Chang.

The COURT: Same ruling as to the previous offer.

Mr. BOTTS: Exception.

The COURT: Exception allowed.

(Marked "U. S. Exhibit D").

(Exception No. 13).

Thereafter the plaintiff offered in evidence as U. S. Exhibit "E" an Inter-Island passenger identification check, which the witness, Wells, had testified the defendant identified as his receipt for passage on an Inter-Island Steamship from Kahului, Maui, to Honolulu on December 16, 1935, and the offer being made, the following proceedings were had:

Mr. BOTTS: We object to that, if Your Honor please, on the ground it's incompetent, irrelevant, and immaterial, having nothing to do with any of the issues in this case, obtained as a result of an illegal search and seizure, and not properly identified.

The COURT: The objection is overruled. The exhibit will be admitted.

Mr. BOTTS: Exception.

The COURT: Let the exception be noted.

(Marked "U. S. Exhibit E").

(Exception No. 14):

Thereafter the plaintiff offered in evidence as U. S. Exhibit "F" a small notebook on one of the pages of which "Hong Yin Pin" was written, being the notebook which the witness Wells said Robert Chang admitted belonged to him, indicating that said notebook was found in Robert Chang's suitcase and said book being offered the following proceedings were had:

Mr. BOTTS: We object to the offer, if Your Honor pleases, on the ground that it's incompetent, irrelevant and immaterial, remote, and having no bearing on the issues here, and obtained as a result of an illegal search and seizure.

The COURT: The objection is overruled. The exhibit will be admitted.

Mr. BOTTS: Exception. [118]

(Exception No. 15):

Thereafter the plaintiff offered in evidence as U. S. Exhibit "G" the suitcase, together with the Christmas wrapping paper that was around the packages at the time of seizure and identified it as being the same articles found in room 10 of the Maunakea Rooming House and as the property of

the defendant, Robert Chang, and this offer having been made, the following proceedings were had:

Mr. BOTTS: The same objection, Your Honor, on the ground that it was obtained as a result of an illegal search and seizure, and incompetent, irrelevant and immaterial.

The COURT: Same ruling.

Mr. BOTTS: Same exception.

The COURT: Let the exception be noted.

(Marked "U. S. Exhibit G").

On cross-examination, the witness was asked the words in the statement (U. S. Exhibit "A") that Robert Chang did not understand. The witness explained that Robert Chang did not know what was meant by the word "statement" and he said he was quite sure that the other thing he didn't understand was the question "What was his instructions to you?" The witness said he did not believe that Robert Chang understood what the word "instructions" meant. The witness said that when they arrested a narcotic offender in Hilo, they took him to the Police Station and if he couldn't make bond, they lodged him in jail. He said they finished Mrs. Ah Fook Chang's statement between half past ten and eleven o'clock. That they didn't purport to take the statement down in longhand or shorthand, but they attempted to merely put down the substance of what was said. He was asked:

Q. So what you've attempted to do here is to put the skeleton of what he said in this statement?

A. Yes sir.

Q. And you make no pretense of having taken it down in shorthand or anything of the sort?

A. No sir. [119]

He said he took three statements from Mrs. Chang, the first was taken when he arrived about two or three o'clock in the afternoon, in which she denies all complicity in the transaction and the second statement was taken later in the afternoon, just after dinner-time when she again denied all complicity in the matter and the third and last statement began about 9:50. That he took the same number of statements from Robert Craig.

On redirect he said that when he took the statements, the Clerk DeMello was sitting at the typewriter; that he would ask the question, get the answer and then he would type the substance of both question and answer. After it was all typed out it was read out to the defendant, then defendants were permitted to read the statements and in conclusion they signed them. He said he had questioned Robert Chang about the little blue book (U. S. Exhibit "F") on the day he arrived in Hilo, December 19th.

On recross examination, he said that Mrs. Chang did not ask to have any words explained to her. That he questioned her about her family and she said she was married to Ah Fook Chang of Maui and had seven or eight children, one of them, the infant, being with her.

(Exception No. 16):

The plaintiff having rested, the following proceedings were had:

Mr. BOTTS: We ask at this time, if Your Honor pleases, that the sworn testimony of Mrs. Ah Fook Chang and Robert Chang, given on Monday in this Court in connection with a motion relating to these statements, be considered as evidence in this case and read by the court reporter to the jury.

Mr. MOORE. May it please the Court, I object to that, for this reason. That the statements of Robert Chang and Mrs. Ah Fook Chang, given on Monday in this Court, were confined and limited considerably, [120] and the United States was not permitted the scope of cross-examination that would be permitted in the case of the actual trial. So that, if those are to be read in evidence in this case I would ask leave then to be permitted to cross-examine each of these witnesses further.

Mr. BOTTS: Counsel has cross-examined, Your Honor; and the testimony in question is evidence adduced in this Court under oath. We claim that the constitutional rights of these defendants were invaded, and they have a right to have that issue presented to the jury independently of the question of their actual complicity in this opium transaction.

The COURT: It will be the duty of this Court later to instruct this jury that they have

a right to consider the appearance and demeanor of these witnesses on the stand.

Mr. BOTTS: That doesn't make any difference, Your Honor; we have sworn testimony here that is properly adducible before this jury.

The COURT: The jury were not present to see the witnesses' demeanor at that time.

Mr. BOTTS: No, but the witnesses were duly sworn. We offer it.

The COURT: For the purpose of the motion it would be sufficient; but the Court feels in this case if the defendants want the testimony of these witnesses it should be produced before the jury.

Mr. BOTTS: Will Your Honor rule?

The COURT: That could not be done without a stipulation and counsel refuses to stipulate.

Mr. MOORE: May it please the Court, we don't want to prevent coming before this jury any testimony that these defendants wish to offer in this case. We're not willing to take and put into this record just the evidence that these defendants want. We claim that we have a right, if this evidence is to be considered by this jury, to cross-examine these defendants upon the case in chief, in addition to the limited cross-examination that was permitted and was permissible at the time when the testimony was given which the defendants now seek to have put in this case.

Mr. BOTTS: That's where counsel is in error, if Your Honor pleases. We have an isolated issue here of a confession and the legality of that confession——

The COURT: Which is a question for the Court.

Mr. BOTTS: It is, in the first instance; but after Your Honor has passed upon it, then it becomes a question for the jury as to what weight they will attribute to that; they have a right to wholly disregard that, and I have a right to so argue to them. [121]

The COURT: The Court does not agree with that view, Mr. Botts, and would have to be shown authorities before it would accept such a view.

Mr. BOTTS: There are ample authorities, Your Honor. Your Honor can only rule that a confession is admissible. After it is admissible Your Honor cannot invade the province of a jury, which is to weigh all the evidence; they can give that evidence just exactly the weight they want to, and Your Honor will instruct the jury that when it comes to weighing the evidence they are the exclusive judges of it, and Your Honor nor I cannot take away from the jury any part or particle of that power.

The COURT: The jury will be so instructed by this court.

Mr. BOTTS: Will Your Honor rule on the offer please?

The COURT: I thought it had been ruled on.

Mr. BOTTS: No, Your Honor.

The COURT: The Court has stated before and will repeat that if you wish the testimony of these defendants you should produce them on the stand at this time.

Mr. BOTTS: We wish the testimony given on the issue of the facts and the propriety surrounding the taking of the confessions, sworn testimony taken in open court before Your Honor.

The COURT: In the case of an appeal you would have the benefit of that testimony on the appeal. The witnesses cannot be taken before the appellate court, but they can be produced before this Court, that is, before this jury, whose duties as you now contend for are even larger than the Court had assumed.

Mr. BOTTS: Your Honor hasn't ruled.

The COURT: If that's the nature of an offer, the offer will be denied.

Mr. BOTTS: I want the record to show that, if there's any doubt about it, it is in the nature of an offer. I am offering in evidence—and I believe I used that language—the testimony taken on Monday in this court of Mrs. Ah Fook Chang and Robert Chang touching the statements which have been admitted in evidence here, obtained from them on December 19th, 1935, being Exhibits "A" and "B" for the Government; and the offer is that the court

reporter be requested to read that evidence to the jury. I understand Your Honor has denied the offer?

The COURT: Yes, that's the ruling of the Court.

Mr. BOTTS: May the record show I note an exception?

The COURT: Exception is allowed.

Thereupon the defendants closed their case. [122]

The foregoing presents, in substance in narrative form, except such portions as have been set out as excerpts, all the evidence in the trial of this cause.

Whereupon counsel presented their closing arguments to the jury.

Thereupon the Court read its written instructions to the jury as follows:

“Instruction No. 1.

“You are instructed, Gentlemen of the Jury, that the offenses alleged to have been committed in this indictment are charged to have been committed by two defendants, i.e., Mrs. Ah Fook Chang alias Kam Yuen and Robert Chang alias Yuk Moon. In your consideration of this case you are to weigh the evidence for the purpose of determining the guilt or innocence of each of said two defendants, and each of the two offenses charged in said indictment.”

“Instruction No. 2.

“You are instructed that, under the law, ‘When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts’. The indictment in this case was framed relying upon the provisions of the law above quoted, and in it there are two charges which, under the technical term employed in the legal parlance, are called ‘counts’. Each of said two counts constitute a separate and distinct charge covering separate and distinct crimes, although, as you will note from an examination of said indictment, both of said crimes are alleged to have been committed at the same time and place, to-wit: On or about the 18th day of December, 1935, at Hilo, County of Hawaii, Territory of Hawaii. In drawing the indictment the United States Attorney incorporated in each of the counts of said indictment material language found in the different sections of the law it is said was violated and indicating clearly what each particular violation consists of, the first count charging a violation of what is properly known as ‘The Narcotic Drugs Import and Export Act’ and the

second count charging a violation of what is properly known as 'The Harrison Narcotic Act'. [123]

"Each of said counts constitute a separate and distinct offense, and each should be considered by you the same as though there was a single indictment as a basis of this action, and the guilt or innocence of each of the defendants is to be determined as to each count and in accordance with the law as given you in all of the instructions herein, each of said instructions to be fully applied to each and every count of the indictment and as to each defendant now on trial.

"You are further instructed that where a count of the indictment charged two or more acts as constituting the offense, it is not necessary that you should find the defendants to have committed all of said acts in order to find them guilty of the offense charged, but that it is sufficient if you find from the evidence that they committed any of the said acts as charged.

"By way of illustration: The first count charged that said defendants did (1) receive, (2) conceal, (3) buy, (4) sell, etc. etc. It is not necessary that the Government should prove that defendants did all four of said acts with regards to said 70,008 grains of opium, but the Government has met the requirement of the law if it proves defendants did any one

of said four things; likewise, in the second count of the indictment, defendants are charged with having purchased, sold, dispensed and distributed said 70,008 grains of opium. To meet the required burden as to this count, the Government need only prove in the manner required by these instructions that defendants did any one of said alleged acts.”

“Instruction No. 3.

“The indictment in this case is in no sense evidence or proof that the defendants have committed the alleged crime, but is merely a formal allegation, required by law, alleging that the crime was committed in the form and manner therein set forth, and no juror should suffer himself to be influenced in any degree by the fact that this indictment has been returned against the defendants.”

“Instruction No. 4.

“A criminal prosecution begins with the presumption that the defendant, although accused, is innocent, and that to overcome this legal presumption the evidence must be clear and convincing and sufficiently strong to convince the jury beyond a reasonable doubt that the defendant is guilty. The presumption of innocence is evidence created by the law in favor of one accused, whereby his innocence is established until sufficient evidence is introduced to over-

come the proof which the law has created. The [124] benefit of this presumption attends the accused at every stage of the proceedings and stands as his sufficient protection unless and until it has been removed by evidence proving his guilt beyond a reasonable doubt."

"Instruction No. 5.

"A reasonable doubt is the condition of mind produced by the proof resulting from the evidence in the case. It is an honest, substantial misgiving, founded upon reason, generated by the proof or lack of proof and resulting solely upon evidence in and not outside of the case, so the reasonable doubt to which every defendant is entitled must likewise be founded upon evidence in the case or upon a lack of evidence. It is such a state of the proof as fails to convince your judgment and conscience and satisfy your reason of the guilt of the accused. If the whole evidence when carefully examined, weighed, compared and considered, produces in your minds a settled conviction or belief of the defendant's guilt—such an abiding conviction as you would be willing to act upon in the most weighty and important affairs of your life—you may be said to be free from any reasonable doubt and should find a verdict in accordance with that conviction or belief. But if you still retain in your mind a reasonable doubt of the guilt of the defendants, it is your duty to vote for an acquittal."

“Instruction No. 6.

“The first count of the indictment alleges a violation of the Narcotic Import and Export Act, the material parts of which are as follows:

“‘If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assists in so doing or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, such person shall * * * be punished. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.’ Sec. 174, Title 21 U. S. C. A.

“Your attention is invited to the above statutory rule of evidence relative to the effect of proof of possession. [125]

“These provisions are made a part of the law because of the difficulty of proving guilty knowledge, and render it necessary only that the Government prove beyond a reasonable doubt that the defendants knowingly had narcotic drugs (in this case opium) in their possession, when the presumption at once arises

that it had been imported contrary to law, and such possession whenever same is shown would impute to the defendants possessing such drug a guilty knowledge of such illegal possession sufficient to warrant a conviction, unless defendants shall explain such possession to the satisfaction of the jury, but if the defendants do so explain such possession to your satisfaction they are entitled to an acquittal."

"Instruction No. 7.

"Count 11 of the indictment charges a violation of what is commonly known as the Harrison Narcotic Act, the material parts of which are as follows:

" 'It shall be unlawful for any person to purchase, sell, dispense or distribute any 'cocoa leaves or any compound, salt, derivative or preparation thereof produced in or imported into the United States' except in the original stamped package or from the original stamped package; and the absence of appropriate tax paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession it may be found.' Secs. 1040A & 1043A, Title 26, U. S. C.

"Your attention is invited to the rule of evidence under this statute that drugs are only permitted to be sold in or from the original stamped package, and that if you find and believe from the evidence, beyond a reasonable

doubt, that these defendants, or either of them, had possession of the drugs and there were no tax paid stamps upon them, then prima facie presumption immediately arises that the defendants, or either of them, who had such possession unexplained, violated this law.”

“Instruction No. 8.

“In this case the burden of proof is upon the United States, and, to entitle it to a conviction of the defendants, the United States must prove every material element of the offense, to the satisfaction of each member of the jury and beyond a reasonable doubt. If any of you entertain a reasonable doubt of the defendants’ guilt as to any material element of the offense, it is your sworn duty to vote for an acquittal as to such offense, otherwise to vote for conviction.” [126]

“Instruction No. 9.

“If you can reconcile the evidence with any reasonable hypothesis consistent with the defendants’ innocence, it is your duty to do so and in that case to find them not guilty, for every reasonable doubt is to be resolved in favor of a defendant, and it is not sufficient that the circumstances coincide with, account for and therefore render probable the guilt of the defendants. They must exclude to a moral certainty every other reasonable hypothesis.”

“Instruction No. 10.

“If, after careful consideration of all the evidence in the case and after calm and dispassionate reasoning with other jurors, any juror arrive at a definite conclusion as to the guilt or innocence of the defendants, then such juror ought not change such conclusions solely for the reason that some jurors have arrived at the opposite conclusion.”

“Instruction No. 11.

“You are instructed that in every crime, as in this case, there must be an intent on the part of the defendants to commit the crime and if you are not satisfied beyond all reasonable doubt that the defendants had the intent to commit the crime alleged in the indictment, then your verdict must be not guilty; in this connection, however, you are instructed that, under the law, a person is always presumed to intend the natural and probable consequences of his acts.”

“Instruction No. 12.

“The Court further instructs you, Gentlemen of the Jury, that you are the exclusive judges of the credibility of the witnesses, of the weight of the evidence and of the facts in this case. It is your exclusive right to determine from the appearance of the witnesses on the witness stand, their manner of testifying, their apparent candor or frankness, or lack thereof,

which witness or witnesses are more worthy of credit, and to give weight accordingly. In determining the weight to be given the testimony of the witnesses, you are authorized to consider their relationship to the parties, if any; their interest, if any, in the result of this case; their temper, feeling or bias, if any has been shown; their demeanor on the witness stand; their means and opportunity of information and the probability or improbability of the story told by them.

“If you find and believe from the evidence that any witness in this case has knowingly or wilfully sworn falsely to any material fact in this trial, or that any witness has knowingly and wilfully exaggerated or suppressed any material fact or cir- [127] cumstance in this trial for the purpose of deceiving, misleading or imposing upon you, then you have a right to reject the entire testimony of such witness, except insofar as the same is corroborated by other credible evidence or believed by you to be true.”

“Instruction No. 12-a.

“You are instructed that there has been admitted in evidence in this case alleged confessions of each defendant, and that each of these confessions were alleged to have been made in the presence of each of the defendants.

“The Court instructs you that a confession of guilt should not be considered if it was not

free and voluntary but procured through influence of threats or the promise of favor, or other circumstances which might render it involuntary. But a free and voluntary confession is generally deserving of the highest credit because it is against the interest of the person making it and is presumed to flow from a sense of guilt.

“You are further instructed that a confession of this character should be received with caution and defendants should not be convicted upon the evidence of such confessions alone, unless supported by other proof in the case.”

“Instruction No. 13.

“Finally, Gentlemen of the Jury, if after deliberately considering all the facts and circumstances in the case and carefully weighing the evidence and considering in connection therewith the various presumptions and statutory rules of evidence as outlined, you find from the evidence and to your satisfaction beyond all reasonable doubt the allegations in the indictment have been established, it is your duty to return a verdict of guilty, otherwise it is equally your duty to return a verdict of not guilty.”

And in addition thereto, the Court gave from the Bench an oral instruction or interpolation as follows:

“Now gentlemen, it was in connection with this instruction that the Court wishes to inter-

polate something. This instruction was drawn in conference this morning between the respective counsel in this case and the Court, and is taken largely from a decision of the Supreme Court of the United States and represents the law. No comment would be made were it not for the fact that both counsel endeavored to define to you exactly what would constitute a voluntary confession. [128] Mr. Botts said it would have to be free from urging and improper influence; that's a half-truth. It would have to be free from improper influence to be voluntary, but it wouldn't have to be free from urging, as the Court believes an instruction of the law to be. Mr. Moore said a confession might be voluntary even though the person at the time of making it was shackled. That is, too, a half-truth. Mere shackling would not make it involuntary, but if he was shackled in such a manner as to cause physical or mental suffering it would then become involuntary. This instruction was not given for this case alone, but would be the law in any case where confessions were offered, just as the previous instructions which have been read are law applicable to all other criminal cases involving like questions. (Reading): Finally, gentlemen of the jury . . . One further instruction, given at the request of the Plaintiff. You are instructed whoever directly commits an act constituting an offense defined in any law of the United States, or aids, abets,

counsels, commands, induces, or procures its commission, is a principal.

“That is simply quoting a section of the law, known as Section 55c of Title 18 in the United States Code.”

The foregoing instructions include all the instructions or charges given by the Court.

(Exception No. 17):

Before the jury retired, defendants noted an exception to one of the instructions given by the Court (No. 12-a) and to the refusal of the Court to give instructions requested by the defendants and the following proceedings were had:

Mr. BOTTS: If Your Honor pleases, before the jury retire, and for the purpose of the record, may I be permitted to note an exception, Your Honor, and also the instruction given by Your Honor, number 12-a; we except to 12-a, if Your Honor pleases, upon the ground that it fails to define the meaning of the term “voluntary” or meaning of the term “involuntary”, and the jury is left without any guide or standard on that subject. We asked Your Honor to give our requested instruction No. 1, which Your Honor refused to do, and we now except to Your Honor’s refusal, on the ground that the instruction properly defined the term “voluntary” and would give the jury a yardstick by which they could measure the confessions from that standpoint; without giving that instruction the jury is without any such guide.” [129]

(Exception No. 18):

Instruction No. 1, requested by defendants and refused, was in the following words, to-wit:

“Instruction No. 1

“I instruct you, Gentlemen of the Jury, that there has been admitted in evidence what purports to be written confessions by the defendants herein.

“In this connection, I instruct you that a confession, to be considered as evidence against a defendant in a criminal case, must be one freely and voluntarily made by such defendant. When we use the word “voluntary” in this connection, we mean that the confession must have been made of defendant’s free will and accord, without coercion, promise or inducement or by the method known as sweating. The word “voluntary” essentially includes in its meaning the freedom of choice as well as the exercise of the defendant’s will without constraint by any force or influence. If, in this case, you believe from the evidence and the facts surrounding the incarceration of these defendants that either of the two purported confessions admitted in evidence herein was not voluntarily made, within the meaning of that word as defined in this instruction, or if you have a reasonable doubt on the point, you should totally disregard, in your deliberations, such confession.”

And said exception to the giving of the Court’s Instruction No. 12-a and the refusal to give defendants’ Instruction No. 1 was duly noted and allowed.

(Exception No. 19):

The defendants requested the Court to give Defendants' Requested Instruction No. 2, which reads as follows:

“Instruction No. 2.

“I instruct you, Gentlemen of the Jury, that in considering whether or not the confession made by Mrs. Ah Fook Chang was voluntarily made within the meaning of this term as heretofore defined in these instructions, it is your right and duty to take into consideration the period, circumstances and duration of her arrest, confinement and detention and the fact that she had, previously to the making of said confession, made at least two [130] other statements in which she denied all guilt and complicity in the matters and things set forth in the final purported confession which was obtained from her, as well as all other facts and circumstances surrounding the taking and making of said alleged confession.”

To the refusal of the Court to give said instruction, defendants duly excepted and said exception was allowed.

(Exception No. 20):

That defendants requested the Court to give Defendants' Requested Instruction No. 3, which read as follows:

“Instruction No. 3.

“I instruct you, Gentlemen of the Jury, that confessions in criminal cases of this kind are received with great caution. They are easily fabricated and the detection and exposure of their fallacy is often difficult. In the consideration and determination of the credibility of confessions, or the effect and weight to which they are entitled, the jury must look to all the facts and circumstances under which they were made.”

To the refusal of the Court to give said instruction, defendants duly excepted and said exception was allowed.

(Exception No. 21):

That defendants requested the Court to give Defendants' Requested Instruction No. 5, which reads as follows:

“Instruction No. 5.

“I instruct you, Gentlemen of the Jury, that a confession obtained from a person held under illegal restraint or unlawful arrest and confinement is per se an unlawful search and seizure and is not competent evidence against the person making the same.

“If, therefore, you find and believe from the evidence in this case that the confession produced, offered and received in evidence by the government was obtained from Mrs. Ah Fook Chang while she was under illegal and unlawful restraint and confinement it will be your duty

to entirely disregard the same in considering your verdict in this case.

“And the same is true with reference to the purported confession of Robert Chang.” [131]

To the refusal of the Court to give said instruction, defendants duly excepted and said exception was allowed.

(Exception No. 22) :

That defendants requested the Court to give Defendants' Requested Instruction No. 6, which reads as follows:

“Instruction No. 6.

“The court instructs the jury, that it was the duty of the officers who arrested defendants in this case, to have brought them before the United States Commissioner at Hilo, or local magistrate, without unnecessary delay, that they might speedily be advised of the accusation against them and be permitted enlargement on bail.

“I further instruct you, as a matter of law, that failure on the part of an arresting officer to bring an arrested person with reasonable dispatch before a commissioner or magistrate, for the purposes mentioned in this instruction, renders the detention and imprisonment of the arrested person unlawful.”

To the refusal of the Court to give said instruction, defendants duly excepted and said exception was allowed.

(Exception No. 23):

That defendants requested the Court to give Defendants' Requested Instruction No. 7, which reads as follows:

“Instruction No. 7.

“I further instruct you, Gentlemen of the jury, that an arresting officerd has no legal right to hold an accused in jail without charge, for the purpose of investigating the crime he is believed to have had a part in, or to procure a confession from him. Detention for such purpose or purposes is illegal.”

To the refusal of the Court to give said instruction, defendants duly excepted and said exception was allowed.

(Exception No. 24):

That defendants requested the Court to give Defendants' Requested Instruction No. 8, which reads as follows: [132]

“Instruction No. 8.

“I further instruct you, Gentlemen of the Jury, that if you believe from the evidence that the defendants in this case were held in confinement without charge and without opportunity to make bail, for an unreasonable length of time, considering the availability of a United States Commissioner, then I instruct you as a matter of law their detention and imprisonment was improper and illegal.”

To the refusal of the Court to give said instruction, defendants duly excepted and said exception was allowed.

(Exception No. 25):

The defendants requested the Court to give Defendants' Requested Instruction No. 9, which reads as follows:

“Instruction No. 9.

“I further instruct you, Gentlemen of the Jury, that the detention and imprisonment of an accused, without charge and solely for the purpose of obtaining a confession from him, renders such confession involuntary as a matter of law and inadmissible against him on his trial for the criminal offense suggested in the confession.”

To the refusal of the Court to give said instruction, defendants duly excepted and said exception was allowed.

(Exception No. 26):

The defendants requested the Court to give Defendants' Requested Instruction No. 10, which reads as follows:

“Instruction No. 10.

“And I further instruct you, Gentlemen of the Jury, that the detention and imprisonment of an accused, without charge and solely for the purpose of obtaining a confession from him, renders a confession thus obtained invalid and

inadmissible against him. A confession thus obtained is an invasion of defendant's rights under the Fourth, Fifth and Fourteenth Amendments of the Constitution. These Amendments shield and protect him, not only in the lawful enjoyment of his tangible possessions, but also in the possession of the secrets of his mind."

To the refusal of the Court to give said instruction, defendants duly excepted and said exception was allowed. [133]

The jury having been instructed they retired to consider their verdict.

Thereafter the following proceedings were had as appears from the Affidavit of E. J. Botts, attorney for defendants, and certified as correct by the Trial Judge.

[Title, Court and Cause Omitted.]

**"AFFIDAVIT FOR DIMINUTION OF
THE RECORD.**

"United States of America,
Territory of Hawaii—ss.

"E. J. BOTTS, being first duly sworn, on oath, deposes and says:

"That he is the attorney for the defendants above named; that the above entitled matter was submitted to the jury, for its verdict, at approximately 12 o'clock noon, February 19th, 1936; that a little after 5 o'clock the jury still deliberating the foreman came to the chambers

of the presiding Judge, Honorable S. C. Huber, and in the presence of affiant and Willson C. Moore, Assistant United States District Attorney, conducting the prosecution, informed the judge that the jury wished to be advised if the confession of one defendant in the case could be considered as evidence against the other; that affiant requested the court to inform the foreman that a confession in the case was only evidence against the party making it, notwithstanding that a co-defendant was present when the confession was being made; but the judge over defendants' exception adhered to the instruction given the jury in the course of the trial, viz, that a confession made by one defendant in this case could be considered by the jury as evidence against the other; that thereupon the foreman retired and a few moments later the jury returned to the court room, with a verdict against both defendants; that neither clerk nor court reporter was present during the proceedings above recounted in the judge's chambers.

“And further affiant saith not.

(sgd.) E. J. BOTTS

Subscribed and sworn to before me, this 24th day of Feb., 1936.

[Seal] (Sgd.) GLADYS K. BENT,
Notary Public, First Judicial Circuit, Territory
of Hawaii. [134]

“CERTIFICATE OF PRESIDING JUDGE.

“I certify that the facts set forth in the foregoing affidavit are true and correct.

(Sgd.) S. C. HUBER,

Judge, United States District Court, in and for the District and Territory of Hawaii.”

(Exception No. 26):

That thereafter, the jury having returned a verdict against defendants on both counts of the indictment, a motion for a new trial was duly filed in the above entitled matter on the 20th day of February, 1936, said motion for new trial being in words and figures as follows:

[Title, Court and Cause Omitted.]

“MOTION FOR NEW TRIAL.

“Comes now MRS. AH FOOK CHANG, alias KAM YUEN, and ROBERT CHANG, alias YUK MOON, defendants above named, and move that the verdict of the jury herein be vacated and set aside and that they have a new trial herein upon the following grounds:

I

“Errors of law committed by the trial court in the admission of incompetent, irrelevant and immaterial evidence by the United States prejudicial to these defendants.

II.

“Errors of law committed by the trial court in the exclusion of relevant and material evidence offered by the defendants.

III.

“Errors of the trial court in refusing to give instructions requested by defendants, to which refusal exceptions were duly taken, and giving a certain instruction to the jury, objected to by defendants and to giving of which instruction defendants duly excepted.

IV.

“Error of the trial court in denying the motion of defendant, Robert Chang, alias Yuk Moon, for the suppression of the evidence obtained as a [135] result of the search and seizure of defendant’s room on December 18, 1935.

V.

“Error of the trial court made on the hearing of said motion to suppress evidence obtained by said search and seizure, in denying defendant’s offer of proof that the Federal and Police Officers making said search and seizure could reasonably have obtained, and had reasonable grounds for obtaining, a search warrant for said search and seizure, which offer of proof was denied by the court over the exception of defendants.

VI.

“That the trial court erred in denying the motion of the defendant, Mrs. Ah Fook Chang, alias Kam Yuen, for the suppression of a purported confession obtained from her by Federal Narcotic officers during the night of December 19, 1935.

VII.

“That the trial court erred on the hearing of said motion to suppress said confession in denying defendant’s motion to produce said confession for inspection and for use in connection with the examination of the witnesses called to testify with relation to said confession.

VIII.

“That the trial court erred in admitting in evidence U. S. Exhibits A and B, being the purported confessions of the defendants herein.

IX.

“That the trial court erred in refusing to instruct the jury, upon motion duly made by defendants, that the purported confession of Robert Chang, alias Yuk Moon, could not be considered as evidence against Mrs. Ah Fook Chang, alias Kam Yuen.

X.

“That the trial court erred in refusing to instruct the jury, upon motion duly made by defendants, that the purported confession of Mrs. Ah Fook Chang, alias Kam Yuen, could

not be considered as evidence against Robert Chang, alias Yuk Moon.

XI.

“That the trial court erred in admitting in evidence as exhibits the opium, suitcase, boxes and papers and other articles obtained as a result [136] of the search and seizure of defendant’s (Robert Chang’s) room in the Mauna Kea Rooming House on said 18th day of December, 1935.

XII.

“That the trial court erred in refusing to admit in evidence, upon the trial of the above entitled cause, the sworn testimony of defendants given in support of the motion of Mrs. Ah Fook Chang, alias Kam Yuen, for the suppression of her purported confession.

XIII.

“That the verdict of the jury herein was contrary to the evidence, to the law and to the weight of the evidence.

“This motion is based upon the records and proceedings had herein.

“Dated at Honolulu, this 20th day of February, A. D. 1936.

“MRS. AH FOOK CHANG, alias
KAM YUEN and ROBERT CHANG,
alias YUK MOON—Defendants above
named,

By (sgd) E. J. BOTTS,
Their Attorney.”

Said motion, being submitted to the Court, was denied, to which ruling counsel for defendants then and there excepted.

Forasmuch as the matters above set forth do not fully appear as of record, defendants tender this, their Bill of Exceptions, and pray that the same may be signed and approved by the judge of this Court.

Dated at Honolulu, this 3rd day of March, A. D. 1936.

(sgd) E. J. BOTTS,
Attorney for Defendants. [137]

The foregoing Bill of Exceptions was filed on the 18th day of March, A. D. 1936, within the time allowed for filing the Bill of Exceptions. Said Bill contains all the material evidence given and proceedings had upon the trial of this action and the Court's charge to the jury, and is in all respects correct, and is hereby approved, allowed and settled and made a part of the record herein.

Dated. Honolulu, T. H., March 18th, A. D. 1936.

(s) S. C. HUBER

Judge, United States District
Court, in and for the District
and Territory of Hawaii.

Service of a copy of the above Bill of Exceptions acknowledged, this 3rd day of March, A. D. 1936.

(s) WILLSON C. MOORE

Ass't United States District Attorney, in and for the District and Territory of Hawaii. [138]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

Filed Mar. 18, 1936 at 1 o'clock and 10 minutes p. m. Wm. F. Thompson, Jr., Clerk. By (s) Thos. P. Cummins, Deputy Clerk. [139]

To the Clerk of the Above-Entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and include in said transcript the following pleadings, proceedings and papers on file, to-wit:

1. Indictment.
2. Bill of Exceptions.
3. Verdict.
4. Judgment and sentence.
5. Clerk's Minutes.
6. Petition for appeal.
7. Assignment of Errors.
8. Order Allowing Appeal.
9. Citation on Appeal (original).
10. Bond on Appeal.

11. Exhibits (except such exhibits as may be omitted by stipulation of parties).

12. Clerk's Certificate.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit and filed in the office of the Clerk of said Court of Appeals at San Francisco, in the State of California, before the 6th day of April, 1936.

Dated at Honolulu, this 18th day of March, A. D. 1936.

MRS. AH FOOK CHANG, alias KAM YUEN, and ROBERT CHANG, alias YUK MOON—Defendants.

By (s) E. J. BOTTS

Their Attorney. [140]

Received a copy of the within Praeipice on this 18th day of March, A. D. 1936.

(s) WILLSON C. MOORE

Assistant U. S. District
Attorney [141]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD
ON APPEAL.

United States of America,
Territory of Hawaii—ss:

I, WM. F. THOMPSON, JR., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing pages numbered from 1 to 141 inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and I further certify that I am attaching hereto the original citation on appeal and that the cost of the foregoing transcript of record is \$53.50 and that said amount has been paid to me by the appellant.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said court this 22nd day of September, A. D. 1936.

[Seal] WM. F. THOMPSON, JR.,
Clerk, United States District
Court, Territory of Hawaii. [142]

[Endorsed]: No. 8352. United States Circuit Court of Appeals for the Ninth Circuit. Mrs. Ah Fook Chang, alias Kam Yuen and Robert Chang, alias Yuk Moon, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed October 9, 1936.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

